

1 A Oh, that's the one I have. I thought you
2 meant that we looked at before. Okay. How about a
3 date on this thing? Almost always, the very first
4 thing I did on a legal pad was put the date up in the
5 upper left-hand corner. Although I can't see it,
6 although you can't read for sure what is up there.
7 But it would certainly be made approximately the same
8 time.

9 Q Okay.

10 (THEREUPON, Deposition Exhibit No. 18 was
11 marked for identification.)

12 Q I hand you what we have marked as Exhibit
13 No. 18 and ask if you can identify that document?

14 A Yes, this is an agreement, Article of
15 Agreement as it's designated, no date on it, from
16 Marion C. Kinkead, widow, to Fisher & Young she is the
17 seller and Fisher & Young Inc. is the buyer. And this
18 would seem to, the terms seem to conform with our
19 notes here being total of 125,000, \$25,000 upon
20 execution of the agreement and the balance of \$100,000
21 payable in annual installments of \$10,000 each
22 commencing December 1, 1968.

23 Q Okay.

24 A And if there is anything due by December 1,
25 1977, it would all be paid off.

1 Q All right. Now, do you know whether
2 Exhibit 18 is the draft agreement that is referenced
3 by Attorney Eaton to you in his November 27, 1967
4 letter which is Exhibit No. 2?

5 A It could well be, because this isn't
6 archived right, I'll just tell you that. I think it
7 is probably Mr. Eaton's office that prepared this
8 agreement. And that would be normal, for the seller's
9 attorney to prepare the agreement.

10 Q All right. And there is appears to be some
11 handwriting on the --

12 A Yeah.

13 Q Do you recognize the handwriting?

14 A Yes, that's my handwriting.

15 Q Okay.

16 A We changed the warranty from general to
17 special. We made a notation along the margin above
18 that, interest, INT, none. No interest on the balance
19 due, in other words.

20 Q All right. Would that have been unusual
21 for a sale of real property in 1967 that installment
22 sale contract would carry no interest on it?

23 A Not really, I don't think so.

24 Q Okay.

25 A I don't think that would be unusual. But

1 maybe it's one of those situations where she got
2 enough income, she don't want to have any more. And
3 if this was put on record, somebody, Internal Revenue
4 Service would find out about it and want to have her
5 account for that, maybe. I don't know, I'm just
6 guessing again.

7 Q Okay. So this agreement calls for the sale
8 of the property in fee at least as the draft was sent
9 to you --

10 A Yeah.

11 Q -- for a total of \$125,000?

12 A Right.

13 Q All right. Your notes on it then, there is
14 no interest involved, there is going to be a separate
15 timber agreement for \$100,000?

16 A I guess that's right. I see some other
17 notes off to the side there, \$20,000 down, 8,000
18 annually. That would be on the timber agreement.

19 Q Okay.

20 A And \$5,000 down and \$2,000 a year annually
21 on the land, value of 25,000. You see that?

22 Q I do.

23 A I guess that's what that has to do with. I
24 don't know whether that was ever consummated in that
25 way or not. This not being maybe the final agreement.

1 Q No, no, the terms of the exception and
2 reservation.

3 A You mean you want me to just read it?

4 Q Yes, please.

5 A Oh, okay, "Excepting and reserving from and
6 out of this conveyance all the timber and trees,
7 standing and down, situate on the premises above
8 described, with full right of entry for purposes of
9 cutting, skidding, piling and removing the same, and
10 of constructing roadways and skidways, saw mills and
11 piling yards for such purposes, rights in said timber
12 and trees to second party expire on April 1, 1978."

13 Q Okay.

14 A Let's see, when was this dated? It doesn't
15 say what day in April 1968, so that's 10 years.

16 Q All right. And that would reflect then the
17 note, your notes --

18 A Right.

19 Q -- on the deal that Fisher & Young is going
20 to get the timber rights for a period of 10 years?

21 A Yes, yeah.

22 Q And the language in this Article of
23 Agreement from Marion Kinkead to Fisher & Young she,
24 as I understand it, is selling the land itself to
25 Fisher & Young for \$25,000?

1 A Yeah.

2 Q She is excepting and reserving --

3 A The timber.

4 Q -- from her title the timber --

5 A Yeah.

6 Q -- on the property?

7 A As far as this agreement is concerned.

8 Then she would have another agreement to sell him the

9 timber.

10 Q Okay. All right.

11 A And that wouldn't be recorded. This one,

12 I'm sure was recorded. Oh, yeah, I guess see down

13 here in the lower right-hand corner, you can see the

14 number of the page number of the Recorder's

15 documentation. Page 298 I think that is. Page 298.

16 Q That's just a bate stamp.

17 A That's what?

18 Q That's just the number 298 --

19 A That's page number as recorded.

20 Q No, no, that's a number my office put on

21 that document to identify it for this litigation.

22 A It is?

23 Q Yes.

24 A It looks like the same print as on, well,

25 let me see.

1 A Well, this looks like the same thing we
2 just, we still have the same agreement we just, as
3 Exhibit 20, with no date, no day in April, but it's
4 April blank 1968. This correction about that 2,000,
5 1,000 we were talking about --

6 Q Okay.

7 A -- has been made. And it is for 25,000 and
8 it's for the property described, I don't know how they
9 described this, because it isn't described in this
10 agreement, specifically. Oh, all of the real estate,
11 whether described herein or not, being attached
12 hereto. So there apparently was an attachment showing
13 all those 18 parcels.

14 Q All right.

15 A Any way, otherwise it's the same thing.
16 Now, let me see, there is something on the second
17 page, oh, that's about the reservation of all the
18 trees and timber and rights in the trees and timber,
19 which would expire April 1, 1978.

20 To avoid the payment of the sales tax on
21 the timber, you had to have a day certain when the
22 timber agreement would expire and that's the reason
23 that date was put in there.

24 Q And let's talk about that. If, as I
25 understand it, and well, tell me what your

1 understanding is, if what were the consequences if,
2 for instance, the first draft of the articles of
3 agreement was the way that the property was
4 transferred, just Marion Kinhead is selling Fisher &
5 Young the fee simple absolute for \$125,000?

6 A You mean if they had executed that
7 agreement?

8 Q Yes, if they had executed that, what would
9 have been the tax consequence, if any?

10 A Oh, well, she would have had a big capital
11 gains income tax to pay probably, not knowing actually
12 what her income situation was, but that's generally
13 the reason why people would do this, take advantage of
14 the sales tax law which permitted this.

15 Trees, the cutting of trees is just like
16 the cutting of corn or any other crop, that is if you
17 are going to do it within a specified time certain and
18 I think it was, the limit was about 10 years that you
19 could do that, any way, that you would be excused from
20 paying any sales tax.

21 Q Okay.

22 A Or realty transfer tax I should say.

23 Q And as I understand it, back even in 1968
24 that was one percent of the transaction price, one to
25 the state and one percent transaction price went to

1 Q Customarily as I understand it, back at
2 this time there was an agreement that that one percent
3 tax was split between the buyer and the seller?

4 A That's correct.

5 Q Okay. And in order to avoid paying that
6 tax, a time limit was put on the --

7 A Yeah.

8 Q -- the timber agreement, is that correct?

9 A Yes, that's correct.

10 Q All right. And by virtue of putting a time
11 limit on, then convert the interest in timber to
12 personalty from realty?

13 A That's right.

14 Q And so the transfer folks said well, it's
15 not an interest in real property, we are not going to
16 tax it?

17 A That's correct.

18 Q It's just an interest in personal property,
19 is that where that 4 mills come into play then?

20 A No, that's a different tax entirely. But
21 to follow up what you are saying, there were
22 regulations published by the Department of Revenue
23 with respect to that business of transfer tax, realty
24 transfer tax, excepting and reserving the tax from
25 timber that was going to be cut within a time certain

1 and I think it was, as I said before, not in excess of
2 10 years.

3 Q Okay.

4 A So everybody would try to arrange their
5 agreements and so on so they would have a minimum tax
6 to have to pay.

7 Q Okay. And in fact at least from the drafts
8 of the articles of agreement that we have seen so far,
9 Mrs. Kinhead did that, she was granting or selling
10 actually, take that back, she is excepting and
11 reserving unto Fisher & Young the right to timber for
12 a period of 10 years?

13 A Yes, yes, that's right.

14 Q Okay.

15 A Just follow up on that to make sure we
16 understand this, they would, suppose this thing were
17 consummated all at one time instead of over a period
18 of years, the customary procedure would be to give a
19 deed for the value of the land and the buildings, X
20 number of dollars for that. And the balance of the
21 purchase price would be put in a separate agreement,
22 not necessarily recorded, but it would be a separate
23 agreement between the parties for the timber alone.
24 Put what the value is on that, and when the timber is
25 to be cut.

1 A You may have all of them here, but there
2 may have been another one. Could have been.

3 (THEREUPON, Deposition Exhibit No. 23 was
4 marked for identification.)

5 Q I'm going to show you what we have marked
6 then as Exhibit 23. Ask you if you can identify that
7 document for us?

8 A Okay. Now, this one has attached to it,
9 looks pretty well the same as the other agreement that
10 we just mentioned that was recorded between the
11 parties Kinkead and Fisher & Young dated April 1,
12 1968. Yeah, that was it. For the land 25,000 and so
13 on.

14 And attached to this is a description of
15 the parcels involved. And this was recorded in the
16 Recorder's Office of Warren County as I see the
17 notation on the bottom of each page. And then there
18 are certain exceptions recited where the Kinkeads got
19 the property, the fact that Mr. Kinkead had died and
20 then made subject to an agreement on the Clough Farm
21 Club which was the fishing arrangement we talked about
22 before. But most importantly excepting and reserving
23 out of the transaction all of the timber and trees
24 which was not a part of the 25,000.

25 Q Okay.

1 parties until --

2 A That's right.

3 Q -- the grantor had been paid in full?

4 A That's right.

5 Q Okay.

6 A That's right.

7 Q So if the deal goes south for some reason,
8 there is a recorded copy of the agreement, but the
9 actual deed wasn't going to pass until payment was
10 made?

11 A That's right.

12 Q Okay.

13 A That's right, you are right.

14 Q And again, this articles of agreement is
15 for the sale of land from Marion C. Kinkead to Fisher
16 & Young, Inc.?

17 A That's right.

18 Q Dated April 1st, 1968 and from this deed
19 then excepts and reserves "all of the timber and
20 trees, standing and down, situate on the premises
21 above described, with full right of entry for the
22 purpose of cutting, skidding, piling and removing the
23 same, and of constructing roadways and skidways,
24 sawmills and piling yards, for such purposes,"
25 correct?

1 A That's right. And then as I said
2 repeatedly, there would have been a separate agreement
3 for the timber --

4 Q I understand.

5 A -- at that same time.

6 Q I understand.

7 A Same date and everything.

8 Q Okay.

9 A Different amount of money.

10 Q Different amount of money. Okay. So by
11 virtue of this articles of agreement, Fisher & Young
12 gets no rights to the timber and trees. Marion
13 Kinhead is selling the land, just so I'm clear, she is
14 selling them the land, but holding back all of the
15 timber and trees?

16 A That's true, according to this agreement.
17 We are talking about two agreements.

18 Q No, I understand.

19 A Okay.

20 Q I'm trying to get clear as to what this
21 Article of Agreement accomplishes.

22 A That's right, you are right.

23 Q And it's the sale of the land itself
24 excepting and reserving all interest in the timber and
25 trees?

1 of taxes and whatever. I'm saying that this probably
2 was preliminary because they still haven't put a date
3 in here for the April what, 1968.

4 Q Okay.

5 A Probably something, this was not the final
6 one probably.

7 Q This one also appears to have been a
8 marked-up copy of the front page?

9 A Yes, there is marks, somebody has
10 underlined stuff here. That's not my writing. I know
11 that.

12 Q Okay.

13 A But any way, this is all the timber, 12
14 inches and more in diameter and what not.

15 Q All right. So by virtue of the first
16 articles of agreement that were recorded, Marion
17 Kinkead excepted and reserved all of the timbers and
18 trees unto herself. And then the purpose of the
19 second articles of agreement then is to transfer an
20 interest in that reservation to Fisher & Young?

21 A Yes.

22 Q Okay.

23 A The real purpose is to avoid the transfer
24 tax, that's what it really boils down to. If we would
25 have put the whole 125,000 in one agreement and put

1 that on record, then the Department of Revenue would
2 have wanted to collect one percent.

3 Q Okay.

4 A So that's the real purpose behind it all.

5 Q All right. And the \$100,000 then so we got
6 two agreements now, \$125,000 which reflects what the
7 original deal was going to be?

8 A Uh-huh.

9 Q Also pretty much follows what Fisher &
10 Young apparently had valued the land and the timber
11 for?

12 A Uh-huh.

13 Q And we have come to then again this appears
14 to be an installment payment?

15 A Right.

16 Q They are going to put \$20,000 down, balance
17 of 80,000 is going to be paid --

18 A 8,000 annually.

19 Q -- in 10 annual payments of \$8,000,
20 correct?

21 A That's correct, that's correct.

22 Q And what Marion Kinkead, at least from this
23 draft is granting to Fisher & Young is "all of the
24 timber and trees standing and down measuring twelve
25 inches of more in diameter, one foot from the ground,

1 on the premises here and after described; with the
2 right to enter on said premises and to cut, skid, pile
3 and remove the same, subject to the terms of this
4 agreement until April 1, 1978, on and after which date
5 all rights hereunder on the part of the second party
6 which without notice cease and determine," is that
7 correct?

8 A That's correct.

9 Q All right.

10 A That's what it says.

11 Q So instead of granting to Fisher & Young a
12 right in all the timber and trees, she has limited
13 that grant to those trees that are 12 inches or more
14 in diameter, one foot from the ground and she is
15 limiting the time Fisher & Young can cut that until
16 April 1, 1978, after which time their rights end
17 without notice?

18 A Uh-huh.

19 Q Okay.

20 A That's what it says, yeah.

21 Q Then they talk about, the only other
22 paragraph I have on mine talks about how the taxes are
23 going to be handled on the property for 1968 and
24 thereafter?

25 A That's right.

1 Q From the previous copies that we have
2 looked at.

3 A Oh, okay. Let's see, in Exhibit 26 it says
4 all the timber, trees, standing and down, measuring 12
5 inches or more in diameter, one foot from the ground,
6 on the described premises, with the right to enter to
7 cut, skid, pile, remove the same, so on, subject to
8 the terms of this agreement until April 1 of 1978,
9 after which all rights hereunder shall revert to the
10 owner of the land.

11 Incidentally, the owner of the land it's
12 contemplated will be Fisher & Young.

13 Q Understood.

14 A Now, the other one, Exhibit 25 you think
15 that's different?

16 Q Exhibit 25 just --

17 A Referring to the --

18 Q -- just says that on April 1st, 1978 Fisher
19 & Young's rights end.

20 A Yeah, well both of them say that. Well, I
21 see, the right end, yes, and the one, this later draft
22 of this same agreement appears, says that until April
23 1, '78 on or after which date all rights hereunder
24 shall revert to the owner of the lane, that's where
25 there is a difference then, yes that's right.

1 Q Okay.

2 A That's the wording that we would normally
3 have put in an agreement like this, this Exhibit 26.
4 In other words, terminating, because in the meantime
5 Fisher & Young, for example, if they sold it to
6 Carlisle, which actually happened, and at the end of
7 the time period set for this 10 years, the rights to
8 the timber would revert to Carlisle instead of, Fisher
9 & Young, I suppose.

10 Q Right. So on April 1st, 1978 if we go by
11 Exhibit 26, whoever owns the land on that date gets
12 the reversionary interest of the timber, versus
13 Exhibit 25 where the presumption would be the
14 reversion would go back to Marion C. Kinkead and her
15 heirs, because she is the grantor?

16 A Right. Now, this, the second, the Exhibit
17 26, the subsequent one put on, changing that, putting
18 in reverting to the owner of the land, I guess
19 probably assume that the timber would be paid for.
20 And that was probably done at the request of Fisher &
21 Young, if we are going to be paying for this, we might
22 as well express it maybe differently that it would
23 revert to us, the ones that paid for the timber.

24 Q Isn't that converting, though, the timber
25 and trees, to an interest in real property which is

1 she?

2 Q Not under Exhibit 26, but under Exhibit 25.

3 MR. HABER: Are you going to take the oath
4 and testify or are you just going to let him
5 testify?

6 MR. FRYLING: I apologize.

7 A Well, any way, I don't know what anybody
8 was thinking about or what the intentions were, except
9 that they were, the purpose of the agreement was to
10 avoid the transfer tax. You know, that second
11 agreement on the timber itself, that's the primary
12 reason for having that.

13 Q Okay.

14 A And then not bothering to record it
15 actually.

16 Q All right.

17 A And we know that Mrs. Kinkead was paid in
18 full or she wouldn't have signed the deed for the,
19 even for the land.

20 Q Right. So as I understand it then, the
21 only way that the timber can be transferred to Fisher
22 & Young to avoid paying transfer tax on it is that
23 they be given an interest in personal property with a
24 limited right to cut?

25 A Yeah.

1 Q Is that correct?

2 A Yes.

3 Q Okay.

4 A Limited, I don't know what you mean by
5 limited. Limited in as much as they cut they have to
6 pay for the timber that's cut for one thing. And
7 secondly they have to have a time certain in which it
8 would be cut.

9 Q Right, but when I say limited, I mean
10 limited within a time duration, in this case an
11 agreement that contemplated giving Fisher & Young the
12 10 years to take their personalty off the land, that
13 being the timber?

14 A Yeah, right.

15 Q Would that be correct?

16 A Yeah, that's right.

17 (THEREUPON, Deposition Exhibit No. 27 was
18 marked for identification.)

19 Q Show you then Exhibit No. 27. Ask you if
20 you can identify that for me, please?

21 A Well, that looks offhand like it's the same
22 as Exhibit 26, does it? No date in April, 1968, same
23 parties. And this would be the same exception as
24 typed in on Exhibit 27 referring to the, or not the
25 exception, the extent of the property being

1 Q And since the Article of Agreement for the
2 real estate has a recording number on it, is it safe
3 to say then that it was that agreement that you sent
4 and not the timber agreement?

5 A That's right.

6 Q And the timber agreement, I think you said
7 customarily would not get recorded?

8 A That's right.

9 Q And the purpose of not recording it is so
10 the revenue people won't find it?

11 A Well, that might be a sneaky way of
12 expressing it, but if they did ask for it, and wanted
13 some kind of a confirmation because they would see the
14 exception on the Article of Agreement referring to the
15 land itself, you would have it, you would have
16 something to show them in. In other words, doesn't
17 have to be recorded, but it, we have it available for
18 your inspection, in other words.

19 Q Okay. And conversely, because it's
20 structured then with a limited time, 10 years, to be a
21 transaction in personalty, there is no requirement
22 like a transfer in real property to actually record
23 anything --

24 A Right.

25 Q -- to be valid, is that correct?

1 A The land was purchased by Fisher & Young
2 for 125, wasn't it? Everything. They separated the
3 agreement for the land and the timber, one was 100,000
4 for the timber and 25 for the land.

5 Q Okay. Was it then Fisher & Young's intent
6 to sell the Boy Scouts not only the land but also
7 timber?

8 A Well, I don't know. I don't think they are
9 going to sell the timber. It says in the notes they
10 were excepting and reserving the timber perpetually.

11 Q Okay.

12 A Except any trees that would have been
13 planted by the Boy Scouts.

14 Q Okay. How could Fisher & Young except and
15 reserve the timber rights perpetually when they only
16 had the right to timber the property until April 1st,
17 1978?

18 A Well, if they paid for it, they would get
19 the timber rights, assuming they, as we discussed
20 before in connection with Carlisle, the same thing
21 applied here, they weren't in the position to do
22 anything in the sale to the Boy Scouts until they paid
23 off Mrs. Kinhead.

24 Q Okay. So at the time they are negotiating
25 with the Boy Scouts, they haven't settled up with

1 Mrs. Kinkead for either the land or the timber?

2 A No, they haven't settled up with her. They
3 weren't going to do that unless they needed to because
4 now somebody else has stepped into the picture and
5 would like to have the property and made him an offer,
6 namely the Boy Scouts who were expecting Carlisle to
7 provide the finances.

8 Q Okay. And your understanding, at least as
9 reflected on your notes then, the items of that
10 agreement were going to be \$100,000, the timber was
11 going to be excepted and reserved perpetually?

12 A Yeah.

13 Q I'm sorry?

14 A Yes.

15 Q If in fact Fisher & Young followed through
16 with its agreement on the Kinkead deal, correct?

17 A That's right.

18 Q All right. Would include the oil, gas and
19 minerals and the building and land, correct?

20 A That's right.

21 Q And the reason that the timber is treated
22 differently than the oil, gas and minerals was because
23 or is because Pennsylvania treats timber differently
24 than it treats oil, gas and minerals, correct?

25 A Exactly, that's right.

1 1978.

2 A Yeah.

3 Q That's the agreement.

4 A They have got an agreement to buy the
5 timber, too.

6 Q I'm only aware of one agreement so far.

7 A Well, they have got two agreements with
8 Kinkead, one for the land, one for the timber.

9 Q Right, I understand that. And the
10 agreement that Kinkead gave them for the timber was
11 the right of Fisher & Young to timber the property
12 until April 1st of 1978. Are you aware of another
13 agreement --

14 A No.

15 Q -- other than the one that we have already
16 looked at?

17 A No.

18 Q Okay. So Fisher & Young when they are
19 selling the property to Carlisle are excepting and
20 reserving the timber rights, the only timber rights
21 they have to except and reserve are the timber rights
22 they got from Kinkead?

23 A Uh-huh.

24 Q Would you agree with me that Fisher & Young
25 can't have any timber rights greater than what they

1 got from Marion Kinkead, their grantor?

2 A Right, right.

3 Q Okay. All right. In addition to whatever
4 agreement was outstanding at that time between
5 Carlisle and, or I'm sorry, between Kinkead and Fisher
6 & Young, Fisher & Young also added some additional
7 terms and conditions in the agreement with Carlisle
8 that weren't present in the agreement with Kinkead?

9 A I don't know.

10 Q Okay, well, for instance, if we look at
11 page, paragraph 6?

12 A Of this last exhibit, 42?

13 Q Yeah.

14 A Okay.

15 Q If we look at paragraph 6, Fisher?

16 A Oh, yeah, that's right, they changed that
17 diameter of the timber to be cut, that they were going
18 to, they were going to, is that what you are referring
19 to?

20 Q Yes.

21 A They are confining the cutting of timber to
22 that measuring 16 inches or more in diameter of one
23 foot from the ground, above the ground and also
24 confine it to the season between November 1st and
25 March 31st each year. Saw timber that would be now.

1 suppose the fishing agreement maybe, whatever,
2 excepting the timber.

3 Q Okay. And again the deed from Fisher &
4 Young excepts and reserves from the conveyance all the
5 timber and trees, standing and fallen, situate on the
6 premise above described, with the right to essentially
7 come on and timber the property, subject to the right
8 of the buyer for its own purpose, all trees fallen for
9 more than one year and all tree tops remaining after
10 logging operations.

11 A That's right.

12 Q Correct? Now, as I understand it, as of
13 January 9th, of 1970, at the time Fisher & Young gives
14 this deed to Carlisle, and this deed is recorded on
15 January 19th of 1970, no deed has been created between
16 Marion C. Kinkead and Fisher & Young transferring to
17 Fisher & Young an interest in the timber and trees,
18 correct?

19 A What you are asking is whether Fisher &
20 Young got a deed from Kinkead yet?

21 Q Correct.

22 A At the time they did this? No, but they
23 had a right to receive one.

24 Q Okay.

25 A They would be estopped from denying that,

1 wouldn't they? I mean the sequence maybe isn't
2 normal, but except that they did have a right to get a
3 deed from Kinhead.

4 Q Okay. And they had a right to get a deed
5 from Kinhead but no deed existed as of January 9th,
6 1970?

7 A No, I guess that's right.

8 Q Okay. Likewise the articles of agreement
9 for the timber between Marion Kinhead and Fisher &
10 Young was not recorded as of record at the Warren
11 County Courthouse?

12 A For the timber you are talking about?

13 Q Yes, for the timber.

14 A Yes, right, right.

15 Q Your title search and certification then
16 would not reflect a recorded timber deed or a recorded
17 articles of agreement for the timber?

18 A No, no.

19 Q Okay. Let's jump ahead then.

20 (THEREUPON, Deposition Exhibit No. 48 was
21 marked for identification.)

22 Q I'm going to show you what we have marked
23 as Exhibit No. 48.

24 A Uh-huh. This is a letter from Terry
25 Warren, attorney in Ashtabula, Ohio, to me dated

1 that agreement was. Now, let's see. Yeah. He is
2 wondering what effect his client might have if Fisher
3 & Young were in default on the agreement with Kinkead
4 I guess. Talk further about making an assignment of
5 that Kinkead agreement to Carlisle if that would help
6 to ease their concerns.

7 Q As I read your response to Mr. Warren in
8 this February 11th, 1970 letter, it appears that
9 Mr. Warren and Mr. Carlisle, prior to purchasing this
10 property, was unaware of the fact that the Kinkead
11 timber agreement existed?

12 A Oh, I guess that's right, probably.

13 Q And apparently Mr. Warren is writing to you
14 asking for an explanation as to what this agreement is
15 and the impact that it's going to have on his client?

16 A Yeah, I guess I must have overlooked the
17 fact that Warren representing Carlisle and that fellow
18 Eardley that we worked with the Boy Scouts, I just
19 overlooked the fact that these weren't the same guys,
20 two different attorneys, two different clients. Any
21 way, I was assuming that everybody knew all about that
22 any way. But I think we got it straightened out on
23 it.

24 Q Okay.

25 A I think.

1 Q And how did you get it straightened out?

2 A Well, I let him know -- well, offering any
3 way, I don't know whether actually was sent or not,
4 but offering to give him an assignment with Kinkead's
5 agreement with Fisher & Young, assigning Fisher &
6 Young's rights to the timber. I guess. I don't know.
7 I'm a little bit foggy about all that after all this
8 time.

9 Q Okay.

10 (THEREUPON, Deposition Exhibit No. 53 was
11 marked for identification.)

12 Q Let me show Exhibit No. 53, a letter from
13 Mr. Warren dated February 13, 1970 and ask you if you
14 have seen that letter before?

15 A Well, I probably saw it. It was addressed
16 to me back in '70, 1970, but he was distressed over
17 the, whatever was going on and saying that they didn't
18 know anything about the relationship between Fisher &
19 Young and Mrs. Kinkead. More specifically, that
20 Mrs. Kinkead had a lien on the timber rights, the
21 original amount of a \$100,000 less current payments.
22 Well, I don't know, let's see, I don't know what
23 happened after this.

24 Q Well, if I understand what occurred, based
25 on these letters, is that after the deal has been

1 closed, Terry Warren who represents Mr. Carlisle, find
2 out through the Union Title Company that there is some
3 agreement outstanding between Marion Kinkead and
4 Fisher & Young?

5 A Right.

6 Q The original amount of which is \$100,000
7 for the timber?

8 A Uh-huh.

9 Q It appears that Mr. Warren is concerned
10 that obviously that's going to impact the title that
11 Carlisle gets --

12 A Uh-huh.

13 Q -- if in fact Fisher & Young default to
14 Marion Kinkead?

15 A Yeah. I don't know how it was finally
16 resolved, but I don't have any recollection. But I
17 would have assumed that we would have suggested to
18 Fisher & Young to pay off Marion Kinkead and get an
19 assignment of all her reservation, in other words,
20 pass on her rights that she had to the new owner,
21 Carlisle.

22 Q Okay.

23 A I don't know what happened. I don't have
24 any recollection. I don't know who made all those
25 side notations on here.

1 as to whether Terry Warren and Albert Carlisle were
2 ever provided with a copy of the agreement between
3 Kinkead and Fisher & Young for the timber?

4 A I have no idea. I don't have any idea. I
5 don't know.

6 (THEREUPON, Deposition Exhibit No. 58 was
7 marked for identification.)

8 Q I'm going to show you Exhibit 58 which is
9 dated February 11th --

10 A Of '71?

11 Q Of '71.

12 A Letter to me from Mr. Warren and this
13 further discussion about this matter. Whatever, he
14 wasn't satisfied with what we were doing I guess or
15 suggesting. Talking about settlement of the 1970
16 taxes.

17 Q Letter addresses a couple of items, one is
18 the taxes, but I guess the bottom of the first page,
19 third paragraph, talks about the Kinkead agreement and
20 as of February 11th of 1971, where that issue stands
21 at least in Mr. Warren's mind.

22 A Yeah, we are at logger head here. They
23 find our suggestion was unacceptable and vice versa,
24 that Fisher & Young find it unacceptable. As I've
25 said, I don't know why the dickens Fisher & Young,

1 that particular problem, get Marion Kinkead out of the
2 picture. It seems logical.

3 Q As I recall from the original article of
4 agreement, the payments were going to be based over 10
5 years, correct?

6 A Uh-huh.

7 Q \$8,000 a year for 10 years?

8 A Uh-huh.

9 Q That would have taken us to 1978 under the
10 original agreement?

11 A Yeah, right. But are you wondering why it
12 happened before then?

13 Q Correct.

14 A Well, I don't know except that it was, they
15 couldn't finalize the agreement with American
16 Hardwoods until they got Mrs. Kinkead out of the
17 picture so went ahead and paid her off and got her
18 deed.

19 Q Okay. And again this deed is for the
20 timber interest that Mrs. Kinkead excepted and
21 reserved when she sold the real property to Fisher &
22 Young by deed and is meant to reflect the agreement
23 that was unrecorded between Marion Kinkead and Fisher
24 & Young regarding the timber, correct?

25 A Right, right.

1 the deal between Kinkead and Fisher & Young for the
2 timber is this deed dated April 20, 1973?

3 A That's all I know about, yes.

4 Q Would you agree with me that this deed was
5 not created nor did it exist at the time Carlisle
6 purchased the land from Fisher & Young?

7 A Let me hear that again.

8 Q Would you agree with me that when Carlisle
9 purchased --

10 A Yes.

11 Q -- the land from Fisher & Young, this deed
12 dated April 20th, 1973, had not been created nor had
13 it been recorded?

14 A That's correct. I agree with that.

15 Q As a consequence of that, would you agree
16 with me that Carlisle purchased the property without
17 notice of this deed?

18 MR. HABER: I'm going to object to the form
19 of the question. You are asking for a legal
20 conclusion. Notice meaning legally? Or the fact
21 that it did not exist?

22 MR. FRYLING: The fact that it didn't
23 exist.

24 MR. HABER: Well, ask the question that
25 way. Of course it didn't exist if he purchased

1 it in 1971 and the deed was prepared in 1973.

2 MR. FRYLING: Well, are you going to answer
3 or is he going to answer?

4 A Well, I agree, that's right. That's my
5 answer.

6 Q Wasn't a trick question. Wasn't tough.

7 A No, but I can't imagine what the reason for
8 the question is except that you are trying to say that
9 now Mrs. Kinkead should have given a deed to Carlisle
10 for this timber.

11 Q Well, I'm not trying to say anything.

12 A No, I know, but --

13 Q I'm trying to find out what documents
14 exist, what those documents say, who drafted them and
15 why. That's my purpose of being here today.

16 A Okay.

17 Q You know, I've got to rely on the documents
18 that are of record like everybody else.

19 After then the sale of '73, if in fact
20 that's when it was consummated with American Hardwood,
21 I understand you wound up the operations then of
22 Fisher & Young, dissolved the corporation?

23 A Right.

24 Q And you were pretty much out of the scene?

25 A Yes.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -

4

5 ALBERT T. CARLISLE,)
)
6 Plaintiff,)
) Civil Action
7 vs.) No. 04-25 ERIE
)
8 BARTONY, HARE & EDSON;)
)
9 SCOTT M. HARE, ESQUIRE;)
)
10 HENRY E. BARTONY, JR., ESQUIRE;)
)
and JOHN JOY V. EDSON, ESQUIRE,)
)
11 Defendants.)

11

12

Deposition of PETER J. KREMBS

13

Tuesday, February 21, 2006

14

15

The deposition of PETER J. KREMBS, called as a
16 witness by the defendants, pursuant to notice and the
Federal Rules of Civil Procedure pertaining to the
17 taking of depositions, taken before me, the
undersigned, Darla J. Carabotta, Notary Public in and
18 for the Commonwealth of Pennsylvania, at the offices
of Hermann, Cahn & Schneider, 1301 East Ninth Street,
19 Suite 500, Cleveland, Ohio 44114, commencing at 9:35
o'clock a.m., the day and date above set forth.

20

21

COMPUTER-AIDED TRANSCRIPTION BY
22 MORSE, GANTVERG & HODGE, INC.
23 ERIE, PENNSYLVANIA
814-833-1799

24

25

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Conner Riley & Fryling:
 4 Andrew J. Conner, Esquire
 17 West Tenth Street
 5 Erie, Pennsylvania 16501

6 On behalf of the Defendant:

7 Weinheimer Schadel & Haber, P.C.:
 8 David L. Haber, Esquire
 602 Law & Finance Building
 429 Fourth Avenue
 9 Pittsburgh, Pennsylvania 15219-1503

10 - - -

11 I-N-D-E-X

12 EXAMINATION BY:	PAGE
13 Mr. Haber	3
	39
14 Mr. Conner	35

15 KREMBS DEPOSITION EXHIBITS:	MARKED
16 A - January 20, 1970 Agreement of Sale	17
B - April 23, 1973 Deed	18
17 C - May 6, 2003 Quitclaim Deed	28
D - June 23, 1999 Letter, Attorney Hare to	
18 Lainard Bush	34
E - June 23, 1999 Praecipe for Writ of Summons	35
19 F - Warren County Court of Common Pleas,	
Case No. 353-1998 C.D. Amended Complaint	35

21 - - -

22

23

24

25

1 PETER J. KREMBS

2 Called as a witness by the defendants, having been
3 first duly sworn, as hereinafter certified, was
4 deposed and said as follows:

5 EXAMINATION

6 BY MR. HABER:

7 Q State your full name?

8 A Peter Krembs, K-r-e-m-b-s.

9 MR. CONNER: David, we're operating under
10 the usual stipulation that all objections except
11 as to the form of the question are reserved until
12 the time of trial, except for the objections that
13 we will have to interpose to attorney/client
14 privilege issues?

15 MR. HABER: Correct.

16 Q Mr. Krembs, my name is David Haber, and I
17 represent the defendants in a lawsuit Albert Carlisle
18 has filed in the United States District Court for the
19 Western District of Pennsylvania.

20 I'm sure you are familiar with depositions,
21 so I'm not going to go through the instructions.

22 A Yes.

23 Q You are licensed to practice law in the
24 State of Ohio?

25 A Correct.

1 Q Are you licensed in any other state?

2 A No.

3 Q Were you ever licensed in Pennsylvania?

4 A No.

5 Q What is your business address here?

6 A 1301 East Ninth Street, Suite 500,

7 Cleveland 44114.

8 Q And what law school did you attend?

9 A Case Western Reserve University.

10 Q And what year did you graduate?

11 A 1973.

12 Q When did you first meet Albert Carlisle?

13 A Sometime in 1998. And I don't recall

14 whether it was in the spring or the summer, but it

15 was, I think, during the first half of the year of

16 '98.

17 Q Do you know how he was referred to you, or

18 came to you?

19 A I think I learned about Bert from a

20 gentleman by the name of Steve Madewell. Steve is the

21 Deputy Director of the Lake County MetroParks System

22 here in this area, and I just knew Steve, and I think

23 Steve brought Bert to me.

24 Q When you first met with Mr. Carlisle, I'm

25 assuming it was at your office?

1 him in the Federal Court action, and then seeking
2 advice relative to that, it could raise the issue
3 of the statute of limitations.

4 MR. CONNER: Let me see if I can shortcut
5 this. I don't think he sought -- in good faith,
6 I don't think Mr. Carlisle sought legal advice
7 with respect to any claims that are involved in
8 the claim of Mr. Carlisle against Mr. Hare.

9 MR. HABER: Let me jump ahead.

10 MR. CONNER: Okay.

11 MR. HABER: And we'll get back to that. I
12 don't necessarily agree with you, but maybe I can
13 ask it so we don't get into that.

14 BY MR. HABER:

15 Q In the summer of 1998 Mr. Carlisle had a
16 case proceeding in the Federal Courts, correct?

17 A Yes.

18 Q And Mr. Hare was his attorney at that time,
19 but Mr. Hare, for reasons I'm not going to get into
20 with you, was going to withdraw or sever the
21 relationship, and Mr. Carlisle was seeking new
22 counsel.

23 A Correct.

24 Q At the time he came to see you, was there a
25 case pending in Warren County, do you know?

1 A No.

2 Q So the only case he had pending at that
3 time was the case in Federal Court?

4 A Correct.

5 Q Did you ultimately represent him during the
6 appeal to the Third Circuit?

7 A Yes.

8 Q You had discussions with Mr. Hare?

9 A Yes.

10 Q Do you recall how many discussions you had
11 with Mr. Hare?

12 A Well, I only recall one discussion back
13 during this time, and it had to do with the necessity
14 of getting his file in order to handle the appeal.

15 Q Did you have a discussion with Mr. Hare
16 relative to the voluntary or withdrawal of claims in
17 Federal Court and the effect of that on the statute of
18 limitations?

19 A I may have had that kind of a conversation
20 with him, but it would have been later on in time, I
21 would think.

22 Q When you say "later on in time?" When I
23 say this, Mr. Hare has notes of telephone
24 conversations in potentially June and July of 1998
25 with you and Mr. Fried, who was associated with you?

1 A Mr. Fried was an associate here, yes.

2 Q He's no longer here?

3 A He's no longer here.

4 Q Regarding the effect of the discontinuances
5 and whether they toll the statute of limitations or
6 not, and whether the new action in Warren County and
7 what the statute of limitations would be, do you
8 recall conversations with Mr. Hare relative to that?

9 A I recall having conversations with Mr. Hare
10 that were directed at activities at the trial level,
11 because I needed to have a pretty substantial amount
12 of information for purposes of handling the appeal.

13 But, you know, the several conversations
14 or -- you know, there may have been as many as three
15 or four conversations with him, but I don't think
16 there were more than two or three. I don't remember.
17 I remember the concerns I had about the case, but my
18 focus was really the appeal.

19 Q You ultimately began to represent
20 Mr. Carlisle in the Warren County action?

21 A Yes.

22 Q At that point was there a concern you
23 raised regarding whether parts or part of that action
24 was time barred with Mr. Hare?

25 A I don't think so. I may have had one

1 conversation with him where I asked him -- you have to
2 understand, in order for me to even know much of the
3 detail of the trial action in the Federal Court, I had
4 to look at quite a few documents, and so I don't think
5 it was June of '98, it must have been sometime after
6 that that we had this conversation. I don't remember.
7 But I do remember having a conversation with him where
8 I may have asked him why he dismissed these -- I
9 remember he dismissed a trespass claim, which is I
10 guess in Pennsylvania, trespass and negligence in Ohio
11 are essentially the same.

12 Q Well, trespass and negligence are separate
13 in Pennsylvania.

14 A Oh, okay. Well, then referred to as
15 trespass, but he dismissed that, and he also dismissed
16 a conversion claim, and I'm sure I asked him why he
17 did that.

18 Q My question was probably a little bit more
19 specific.

20 In Pennsylvania there's what is called a
21 "savings statute," that if you are in Federal Court
22 and for some reasons the case are dismissed, the
23 statute of limitation relates back from the date you
24 first filed. And there was some concern raised
25 whether the voluntary dismissal of these claims would

1 in the Warren County action?

2 A Yes.

3 Q And my understanding is the complaint was
4 filed in late 1998

5 A Something like that.

6 Q And your office prepared the complaint?

7 A Yes.

8 Q At that time in 1998 when you prepared the
9 complaint, did you have local counsel?

10 A Yes. And I don't remember her name, but we
11 did have a local attorney.

12 Q And it wasn't from Mr. Conner's firm?

13 A No, no, this was a person I believe that
14 was recommended by Mr. Carlisle.

15 Q You can't recall her name?

16 A She played a really minor role, and
17 frankly, she was a sole practitioner, and I don't
18 remember her name right now.

19 Q Do you recall when you retained
20 Mr. Conner's firm to be local counsel?

21 A Quite a bit later. And I don't recall when
22 it was.

23 Q The reason I ask the question, there's a
24 pleading filed, that was filed October 12th of '01,
25 which probably was three years after you filed the

1 complaint, and it lists them on the pleading, it's a
2 motion for partial summary judgment. And I was just
3 wondering if it was long before then, around then, if
4 you can recall when Mr. Conner was retained as local
5 counsel?

6 A I know the appeal was over. I know that
7 Mr. Carlisle's deposition in the Warren County case
8 had been conducted by Matson's counsel. And I don't
9 recall -- I remember making the oral argument on the
10 motion for summary judgment in Warren County in front
11 of Judge Millin, and I can't tell you whether
12 Mr. Conner was our local counsel by then or not. He
13 may have been.

14 Q But it was at least several years after the
15 commencement of the action?

16 A It was sometime following the initiation of
17 the action, yes. And I think Mr. Conner may have been
18 our local counsel at the time I made the oral
19 argument, he may have been.

20 Q On the motions for summary judgment?

21 A Yes.

22 Q Going back to the savings statute issue,
23 you said it was a concern around the time you filed
24 the complaint in Warren County?

25 A Or prior to filing the complaint, sure.

1 MR. CONNER: Okay.

2 Q Would I be correct that Mr. Fried probably
3 did more research on that issue than you would have
4 done?

5 A You're absolutely correct.

6 Q Do you know when Mr. Fried left this firm?

7 A No. I don't think Mr. Fried was involved
8 in the preparation of our motion for summary judgment,
9 however.

10 Q After the Federal Court case was concluded,
11 did you have any other further communications with
12 Mr. Hare?

13 A I think I had one conversation with him, or
14 it may have just been a letter, but Chet Fosse had the
15 check for the verdict, and Chet wanted to make certain
16 that Mr. Hare was paid.

17 Q There was a dispute for -- I don't want to
18 use the word dispute -- there was outstanding legal
19 fees due at the time the verdict was paid?

20 A Correct.

21 Q And that was Mr. Fosse's concern because
22 Scott Hare had raised that issue?

23 A Correct.

24 Q Mr. Hare retained you to -- strike that.

25 Mr. Carlisle retained you to represent him

1 in the Warren County action?

2 A Correct.

3 Q And the Warren County action was a dispute
4 with Matson over timbering on the Clough Farm,
5 correct?

6 A Yes.

7 Q Did you prior to filing the complaint do a
8 title search?

9 A No.

10 Q Did Mr. Carlisle ever request you do a
11 title search?

12 A No.

13 Q Is there any particular reason you did not
14 do a title search?

15 A Frankly, it never occurred to me. I mean,
16 I took over a case that had already been litigated.
17 And my main purpose in the Warren County action, was
18 to litigate the issues that Mr. Hare had voluntarily
19 dismissed prior to trial, and to present to the Warren
20 Court what we considered to be a contract case
21 following a dec action, where the rights of the
22 parties had been determined under that contract.
23 Because the jury, as I recall in the federal case, was
24 asked to interpret the contract for the parties, which
25 it did, and it drew some conclusions in a specific

1 jury verdict, and we were litigating those
2 conclusions, and then Judge Millin saw fit to come up
3 with a res judicata rule, which I think is wrong.

4 Q That ruling by the Judge in Warren County
5 on res judicata has not been appealed to the Superior
6 Court?

7 A Not to my knowledge, no.

8 Q Are you still actively involved in the
9 Warren County action?

10 A I'm not as involved as I used to be, but I
11 still consider it to be a case in which I'm counsel of
12 record and working with Andy.

13 (Thereupon, Krembs Deposition Exhibit A was
14 marked for identification.)

15 Q Could you look at what I've marked as
16 Exhibit A.? Do you recognize that document?

17 A Yes.

18 Q Could you tell us what it is?

19 A This is the agreement between Fisher and
20 Young and Mr. Carlisle, in which Mr. Carlisle acquired
21 the land of the Clough Farm subject to timber rights.

22 Q When Mr. Carlisle first saw you, did he
23 provide you a copy of this document?

24 A I can't answer that, I don't know.

25 Q You indicated that you basically believe

1 that the Warren County action was a contract action,
2 and also based on the verdict in the Federal Court?
3 An enforcement of the verdict in the Federal Court
4 action.

5 A Well, it was a contract action, it was also
6 a negligence action, it was a conversion action, and I
7 believe there were two contract theories that were
8 proposed in that action.

9 Q Was this the contract that the Warren
10 County action was in part based on?

11 A Yes, the jury was asked to interpret this
12 contract between the parties. The jury in the federal
13 case.

14 Q Correct. It never got to the jury in the
15 Warren County case.

16 A No.

17 (Thereupon, Krembs Deposition Exhibit B was
18 marked for identification.)

19 BY MR. HABER:

20 Q I show you what was marked as Exhibit B,
21 and ask whether you recognize this document?

22 A Yes, this is the -- oh, this is a deed
23 stamped April 23rd, '73 between Marion Kinhead and
24 Fisher and Young.

25 Q You haven't seen that before today?

1 A Oh, yes, I've seen it before today. I
2 think.

3 Q Do you recall when you first saw it?

4 A I believe I first saw this after
5 Mr. Conner's firm had become more involved in the
6 case. This would have been a relatively recent event,
7 my seeing of it. I mean, it was well after the
8 arguments on the motion for summary judgment in the
9 State court.

10 Q When you say "recently, after Mr. Conner's
11 firm got involved," is there anything in your file
12 that would indicate when you retained Mr. Conner as
13 local counsel?

14 A There might be. I just don't know. I'm
15 not sure when I retained Mr. Conner's firm whether
16 Mr. Fryling was at the firm or not. He may have been,
17 I just don't recall.

18 Q Did you know Mr. Fryling?

19 A No.

20 Q How did you come about to retain
21 Mr. Conner's firm?

22 A I think it was recommended to me by Bert
23 Carlisle, but I'm unsure of that.

24 Q And you say what we marked as Exhibit B was
25 located after Mr. Conner's firm became involved as

1 local counsel?

2 A That's the best of my recollection.

3 Q Is it your understanding that it was
4 located through a title search?

5 A That I can't answer, I don't remember that.

6 Q You don't know how it was?

7 A No.

8 Q Do you recall any discussions with
9 Mr. Conner regarding doing a title search?

10 A Yes.

11 Q Was there any event that occurred that
12 precipitated the discussions regarding having a title
13 search done?

14 A Not that I recall.

15 Q It was Mr. Conner's or Mr. Fryling's
16 suggestion to do a title search?

17 A Well, not only was it their suggestion, but
18 it may have been partially conducted or completely
19 conducted before I even was aware that the title
20 search was done.

21 Q Okay. Did you have any discussions with
22 Mr. Hare regarding whether he had performed the title
23 search?

24 A No. I took the litigation over rather late
25 in the game, Mr. Hare had been around for a couple

1 years, if there were any title issues, I would assume
2 they would have been at the early end of the
3 litigation, or at the start of the litigation.

4 Q When Mr. Carlisle came to you, were you
5 aware or shortly thereafter that he had purchased this
6 property back in 1970?

7 A Correct.

8 Q Were you aware that there had been a prior
9 litigation in Warren County in the mid '80s over
10 somebody cutting trees? The Chesney litigation?

11 A I remember that. I don't remember much
12 about that litigation, but I remember I thought it was
13 a neighbor dispute, where somebody had taken some
14 trees from this property that he was not entitled to
15 take.

16 Q So would I be correct that you didn't
17 perform a title search because you assumed that if one
18 needed to be done, it would have been done prior to
19 your involvement?

20 A Correct. The issue just never came up. I
21 mean, I would think that Matson would not even acquire
22 the property without a title search.

23 Q We can discuss that off the record.

24 Prior to this case have you had much
25 experience in litigating, I'll say, timber cases?

1 Mr. Carlisle regarding bringing a claim against

2 Mr. Hare for legal malpractice?

3 A When?

4 Q In 1998?

5 A I don't think so.

6 Q Did you ever have a conversation with

7 Mr. Carlisle regarding bringing a negligence claim

8 against Mr. Hare?

9 A I may have at some later date, but
10 certainly not in 1998.

11 Q Can you give me a time frame when you may
12 have first had that conversation?

13 A I really can't. I remember we were all
14 disappointed when Judge Millin issued a ruling that he
15 issued.

16 Q When you say "issued a ruling," you mean
17 his opinion in January of 2002 on the motions for
18 summary judgment?

19 A Correct. I think that's the only opinion
20 he ever issued.

21 Q And you believe it was sometime after that
22 opinion?

23 A Likely.

24 Q Sitting here today you have no recollection
25 of any conversation with Mr. Carlisle prior to that

1 A That's right, there was a small section of
2 Mr. Hare's deposition, I believe, where my name was
3 mentioned.

4 Q And Mr. Hare testified as to conversations
5 he had with your office relative to the savings
6 statute?

7 A His testimony where my name came up I
8 believe was about attorneys fees.

9 Q The defendant in the Warren County action
10 raised res judicata as a defense and also the statute
11 of limitations as a defense, correct?

12 A Correct.

13 Q The defendant argued that the Federal Court
14 verdict barred anything that happened prior to 1997,
15 correct?

16 A I think to.

17 Q And that's what Judge Millin ultimately
18 ruled.

19 A Um-hum.

20 Q That's what you said you disagree with.

21 A Correct.

22 Q As pleadings were filed in the Warren
23 County action, would you keep Mr. Carlisle advised as
24 to what was going on?

25 A You know, Mr. Carlisle as a client was not

1 before.

2 Q Do you remember discussions regarding this
3 quitclaim deed being given by the estate of
4 Mrs. Kinhead to Matson Lumber?

5 A Yes.

6 Q Do you recall in relationship to when
7 Exhibit B was found, when this quitclaim deed was
8 given, or discussed? B being the 1973 deed.

9 A Well, it was sometime subsequent to the
10 title search that was performed by Mr. Fryling.

11 Q You believe that Mr. Fryling did the title
12 search, or had someone do it?

13 A I think so, yes.

14 Q Do you recall how long after the title
15 search was performed that the quitclaim deed was
16 given?

17 A No.

18 Q Did you ever have any contact with
19 Mrs. Squatriti, I think that's how she pronounces her
20 name, regarding the quitclaim deed, or securing one
21 for Mr. Carlisle?

22 A No.

23 Q Did you ever meet Mrs. Squatriti?

24 A No.

25 Q Do you recall receiving any information

1 A Correct.

2 Q When the complaint was filed in 1998, what
3 damages were you seeking to recover through the Warren
4 County action?

5 A We were seeking to recover damages for
6 destruction of a trout stream that ran through the
7 property by virtue of Matson's harvesting practices.

8 We were seeking damages for the destruction
9 of trees, for lack of a better word, destroyed by
10 Matson in connection with their harvest practices,
11 since the jury had concluded that Matson's right to
12 harvest was a one-time right, it was not perpetual.
13 All the trees that had sprouted since Mr. Carlisle
14 bought the property were his property, and a lot of
15 his property was destroyed by Matson.

16 And we were also seeking damages for
17 conversion, on the theory that the trees harvested by
18 Matson, since they had a one-time right to harvest,
19 had to be in existence in 1969 or 1970, whatever the
20 year was when Mr. Carlisle purchased the property.
21 And under the terms of the contract, the trees that
22 they harvested at that point in time, '69 or '70, had
23 to be 16 inches in diameter, one foot from the
24 ground. And it was our position that if Matson
25 harvested a tree in the late '80s or '90s that was

1 only eight inches in diameter, a foot off the ground
2 back in 1969, that that was not their property to
3 harvest.

4 Q Did you have a concern whether the statute
5 of limitations would bar recovery for a claim of a
6 tree that was cut down in say 1989?

7 A No.

8 Q And why not?

9 A Because we were pursuing -- we had concerns
10 about the statute as it related to the negligence
11 theories and the conversion theories, but we weren't
12 concerned about the statute as it related to our
13 breach of contract theory, because we interpreted the
14 federal action as a dec action, and the rights of the
15 parties under the contract were not clear until the
16 federal action had concluded.

17 Q So your view was that the Federal Court
18 jury determined the rights of the parties under the
19 contract?

20 A Correct.

21 Q And if somebody had breached the contract
22 two or four years before that jury verdict, you could
23 file that suit within two years of the jury verdict?

24 A Right. Because the rights were unknown,
25 and the Federal Court asked the jury to declare the

1 is worth if the tree is still standing there?

2 A That's correct.

3 MR. HABER: Subject to you finding those
4 documents and discussing whether you produce
5 them, I have nothing further.

6 MR. CONNER: I just have a couple, they're
7 very short questions.

8 MR. HABER: Sure.

9 MR. CONNER: Let's go off the record a
10 second.

11 (Discussion off the record.)

12 MR. CONNER: Back on the record.

13 I just want to mark some exhibits,
14 documents for the record. Let's call this D, E,
15 and F, if you will.

16 (Thereupon, Krembs Deposition Exhibits D,
17 E, and F were marked for identification.)

18 EXAMINATION

19 BY MR. CONNER:

20 Q Mr. Krembs, you were asked by Mr. Haber
21 with regards to the Warren action, and just for the
22 record I've had some documents that have been
23 identified as deposition exhibits. With regards to
24 the Warren action, that is Civil Action 00353, 1998
25 C.D. in the Court of Common Pleas of Warren County,

1 Pennsylvania, can you tell me whether or not from your
2 understanding of the file if that action was initiated
3 as a consequence of a Praecipe for a Writ of Summons
4 which was prepared by Mr. Hare's office?

5 A Correct.

6 Q I'm just, for the record, showing you what
7 has been marked first of all as Exhibit D, a letter.
8 Do you recognize this as a letter that when you took
9 over the representation of Mr. Carlisle, you became
10 aware of the fact that Mr. Hare had written Mr. Bush
11 on June 23rd, 1998 enclosing a writ of summons, and
12 suggesting that a writ of summons that he prepared be
13 filed by Mr. Bush in the Court of Common Pleas of
14 Warren County to initiate that one action?

15 A I recall this, yes. He did this as a
16 courtesy to my office.

17 Q Let me just show you what has been marked
18 as Exhibit E just for the record, if you can take a
19 moment and look at that, and just tell us whether or
20 not at least from your understanding if that is a copy
21 of the writ with Mr. Carlisle's signature on the
22 second page that initiated what Mr. Haber has been
23 referring to as the Warren action; is that correct?

24 A Yes. Our focus at that time was on the
25 appeal, and it was my understanding that this was

1 something that should have been done under the
2 Pennsylvania law.

3 Q Okay. In any case, just going forward a
4 second, you were asked about the complaint that
5 eventually you filed in the Warren action, and this is
6 the amended complaint containing all four counts, and
7 it purports to be dated -- I think the affidavit or
8 verification of Mr. Carlisle is January 6, 1999.

9 Just take a moment, take a look at that,
10 and tell us whether or not that is a copy of the
11 amended complaint with all four of the causes of
12 action that you have discussed here today with
13 Mr. Haber?

14 A Yes, it is.

15 Q And just so we're clear, the action number
16 on the complaint is the same action number that's on
17 the Praecipe for the Writ of Summons; is that correct?

18 A Right.

19 Q And in other words, the same caption is on
20 Exhibit E as on Exhibit F; is that correct?

21 A Yes.

22 Q Let me just go back and ask you just a
23 couple of other questions.

24 You were asked about your past experience
25 with regard to doing timber cases, and I think you

1 indicated that this was your first timber case; is
2 that correct?

3 A That's correct.

4 Q How many real estate litigations -- you
5 have been involved in real estate litigation prior to
6 being involved in --

7 A Yes, I have been.

8 Q With what frequency have you been involved
9 in real estate litigation?

10 A Several occasions. Lease disputes, zoning
11 disputes, lots of them.

12 Q Now, with that background, and recognizing
13 that you had previously testified that you were taking
14 over a case that Mr. Hare had apparently worked on for
15 three or four years, I think you indicated that you
16 had made an assumption that a title search had been
17 done by Mr. Hare's office of the subject property
18 that's filed in this case, which is the Clough Farm;
19 is that correct?

20 A I assumed that whatever title issues were
21 involved were handled either by Mr. Hare, or there was
22 just no title issue at all. I was familiar with the
23 history of the transaction, and I knew that Matson had
24 acquired this asset from Fisher and Young, and I can't
25 believe that timber companies don't do title searches

1 as well.

2 Q And why would you have made that
3 assumption, that somebody in front of you, or prior to
4 you had made the title search, or researched the
5 title?

6 A Well, I just think a timber case, it's
7 probably kind of a rule of thumb that that's the sort
8 of thing you do.

9 Q At least from your experience in doing real
10 estate cases in Ohio generally, when you have been
11 involved with a client initially is that a practice
12 that you customarily follow?

13 A Yes.

14 MR. CONNER: That's all the questions I
15 have.

16 MR. HABER: I just have a couple of
17 follow-up.

18 EXAMINATION

19 BY MR. HABER:

20 Q You have indicated, maybe I misheard you,
21 that the Praecipe for Writ that Mr. Hare prepared was
22 as a courtesy to your office?

23 A Correct.

24 Q You had requested that he prepare it?

25 A I think he suggested that it be prepared.

1 There was something to do with a change in
2 Pennsylvania law on the statute of limitations
3 relating to a contract.

4 Q Contract under seal, as opposed to --

5 A Probably. Probably.

6 Q And when the writ was prepared at that
7 point, June 23rd, you had already been contacted by
8 Mr. Carlisle to represent him?

9 A In the appeal, yes.

10 Q And what about in the Warren County action?

11 A I don't know as if we had agreed that I
12 would represent him in that action at that point.

13 Q If you had not agreed to represent him, why
14 would you ask Mr. Hare to prepare the writ?

15 MR. CONNER: Object. I don't think

16 Mr. Krembs said he asked him to prepare the writ.

17 Q You said as a courtesy to your office,
18 correct?

19 A But it was Mr. Hare's suggestion that this
20 be prepared.

21 MR. CONNER: When you say "this," you are
22 referring to the writ?

23 A Yes.

24 Q Why do you believe it was as a courtesy to
25 your office I guess would be my question?

1 I N D E X

2

3 TESTIMONY OF LAURI L. SEKERAK:

4 Direct Examination by Mr. Fryling Pg. 3

5 Cross-examination by Mr. Haber. Pg. 35

6 EXHIBITS

7 Deposition Exhibit Marked for Identification

8 Exhibit No. 1 Pg. 1

9 Exhibit No. 2 Pg. 17

10 Exhibit No. 3 Pg. 29

11 Exhibit No. 4 Pg. 34

12 Exhibit No. 6 Pg. 34

13 Exhibit No. 7 Pg. 8

14 Exhibit No. 8 Pg. 12

15 Exhibit No. 9 Pg. 12

16 Exhibit No. 10 Pg. 24

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1 P R O C E E D I N G S

2

3 L A U R I S E K E R A K, having been first duly sworn,
4 was examined and testified as follows:

5

6 D I R E C T E X A M I N A T I O N

7 B Y M R . F R Y L I N G :

8

9 Q. Miss Sekerak, my name is James Fryling and I
10 represent Albert T. Carlisle in a claim filed in Federal Court
11 against Scott Hare and his law firm, Bartony, Edson and Hare.

12 And I've asked you to come here today so that I can ask
13 you some questions with regard to the title search that -- one
14 you performed for me for the Carlisle farm. And two, to ask
15 you questions about any other searches or title abstracts that
16 you may have performed on the Carlisle farm. If I ask
17 you a question which you don't understand, please stop me.
18 I'll rephrase the question and re-ask it so that you do
19 understand. If you answer one of my questions, I'll assume
20 that you understood my question and answered it to the best of
21 your ability, okay?

22 A. Yes.

23 Q. All right. Have you ever had your deposition
24 taken before?

25 A. Yes.

1 Q. Okay. So you know you need to give me a verbal
2 response and wait until I finish speaking?

3 A. Yes.

4 Q. Okay, good. If you would -- If you need to take a
5 break for any reason, just let us know and we'll be happy to
6 accommodate you. I don't imagine we'll be very long. But if
7 for some reason you'd like to take a break, let us know.

8 A. Okay.

9 Q. Could you give me your full name, please?

10 A. Lauri L. Sekerak.

11 Q. What is your professional address?

12 A. It's 311 Market Street in Warren, Pennsylvania.

13 Q. Okay. How old are you?

14 A. Forty-four.

15 Q. And your date of birth?

16 A. 6-13-61.

17 Q. Are you married?

18 A. Yes.

19 Q. And your spouse's name?

20 A. Edward Sekerak.

21 Q. And his occupation?

22 A. A real estate appraiser.

23 Q. Okay. Can you tell me a little bit about your
24 education? Where did you go to high school?

25 A. I went to high school in Westerly, Rhode Island,

1 Land Title Institute offered courses, I took their courses,
2 attended some seminars for like title work and research.

3 Q. Okay. And the training that you have for title
4 work, was that mostly done through abstract companies or
5 seminars that were put on by various companies?

6 A. When I moved back to Warren in 1983, after I
7 graduated college, I worked for an attorney firm, Blackman and
8 Frasier in Warren and they trained me.

9 Q. Okay.

10 A. And I worked there up until 1985, and then I
11 started my own business.

12 Q. Okay. So you've been searching titles then since
13 1983?

14 A. Yes.

15 Q. Okay. And REM Abstract Services, that's your
16 company?

17 A. Yes.

18 Q. And is it a corporation, company or sole
19 practitioner --

20 A. Sole.

21 Q. Sole, okay. Did you start that service or did you
22 acquire it or how did that come about?

23 A. I started that in 1985.

24 Q. That was 1985?

25 A. Yes.

1 A. No.

2 Q. Okay. Now have you had an opportunity to perform
3 a title search and to prepare an abstract of title on the
4 Carlisle slash Clough farm?

5 A. Yes.

6 Q. All right. And have you done that more than once?

7 A. Yes.

8 Q. All right. How many times have you done a title
9 search on the Clough slash Carlisle farm?

10 A. On the whole farm I've done it once for you,
11 Attorney Fryling.

12 Q. Okay.

13 A. And I've done certain parcels for Ardent Resources
14 when they drilled gas wells on certain parcels of the Clough
15 farm.

16 Q. Okay. When did Ardent Resources request a search
17 done on certain parcels?

18 A. I believe it was 1991.

19 Q. Okay. Would they have asked you then, as opposed
20 to doing a full search, to do a search on particular parcels
21 that make up the whole of the Clough farm?

22 A. Yes.

23 Q. So if I understand you correctly, the first time
24 you would have done a complete title search and abstract of
25 title on the Carlisle farm was pursuant to my request?

1 A. For the --

2 Q. For all 16 parcels?

3 A. Yes, for all 16 parcels.

4 Q. Other than myself and Ardent Resources, has anyone
5 asked to you do a title search of the Carlisle slash Clough
6 farm?

7 A. Yes.

8 Q. Okay. Who was that?

9 A. It was Attorney Dennison.

10 Q. Okay.

11 A. And that request was in September of 2005.

12 Q. Okay. Anyone else?

13 A. Not for a full title search, no.

14 Q. Okay. Anyone else besides those individuals or
15 companies that you've already named who have requested partial
16 searches?

17 A. Greg Hammond's office. Greg Hammond, an attorney
18 in Warren, received a letter from Kemp Scales in Titusville to
19 locate the heirs of Levy Clough.

20 Q. Okay.

21 A. I also performed curative work for Cabbot Oil and
22 Gas that held the lease on the Clough farm.

23 Q. Okay. Do you recall approximately when Greg
24 Hammond would have contacted you?

25 A. I believe it was in June, 2003.

1 it was hand drawn. It was just absolutely gorgeous. And
2 Denny Whipple was the map room director technician at the
3 time. Two days after Denny Whipple died, a surveyor
4 by the name of William Bevevino, Sr. came in and removed all
5 of the files, including that Clough map.

6 Q. Okay.

7 A. I also remember providing to William Bevevino, Jr.
8 and Rene Johnson, the attorneys, the local attorneys, I
9 believe it was for Carlisle, copies of my searches that were
10 in my file.

11 Q. Okay.

12 MR. HABER: What was the other name?

13 THE WITNESS: Rene Johnson.

14 MR. HABER: Maureen?

15 THE WITNESS: Just Rene, R-E-N-E.

16 BY MR. FRYLING:

17 Q. There appears, also on Exhibit 2, a mention of
18 Fisher and Young against William McChesney of approximately
19 1986. Do you recall whether or not one of the attorneys
20 involved was looking for that file or information from that
21 file?

22 A. I believe that that case was north of Route 426
23 and William McChesney was a timber purchaser who purchased
24 large tracts of land. And I believe there was a boundary line
25 dispute. And I believe that there was a dispute of where the

1 tract line was regarding the Fisher and Young. And I believe
2 that would be what that case is about.

3 Q. Okay. And there's a name Jenny, with a phone
4 number and an extension. Do you recognize that name or phone
5 number?

6 A. Yes, that would be Jenny Phillips, and that is the
7 old number for the Prothonotary's Office in the Warren County
8 Courthouse.

9 Q. Okay. I'm going to show you what I've marked as
10 Exhibit Number 3 (indicating). And again this is a copy of
11 some notes from Attorney Hare's file which they've provided
12 us. And it appears to be a note that Attorney Hare made back
13 on 3-31-97 relating to a phone call apparently that he had
14 with you?

15 (Sekerak Deposition Exhibit No. 3 was marked.)

16 A. Uh-huh.

17 Q. And again you've told us that you remember this
18 big six foot map that was rolled up, and you remember the
19 Clough designation?

20 A. Uh-huh.

21 Q. Does that relate to the map, the Clough
22 designation?

23 A. Yes.

24 Q. Okay. Denny Whipple was the map room technician,
25 and the day after Denny Whipple's funeral all the maps

1 disappeared, maps from the fishing club and Clough's deeds,
2 from way back.

3 A. Uh-huh.

4 Q. Prior to 3-31 of '97, had you had an opportunity
5 then to go through deeds to the Carlisle property including
6 leases or deeds regarding a fishing club?

7 MR. HABER: Object to the form of the question.
8 what's the March 31st date? It seems to indicate she
9 did that on March 31st. I don't think she did that.

10 MR. FRYLING: No, I asked prior to March 31, '97.

11 MR. HABER: Okay.

12 BY MR. FRYLING:

13 Q. Did you have an opportunity prior to that date to
14 have gone through maps of the fishing club from deeds from way
15 back? I guess I'm just wondering what that refers to?

16 A. As I recall I've had this same conversation with
17 Jim Hall. I believe that I remember when I was doing the
18 adverse on the title search for Ardent Resources, probably
19 that I remember seeing some kind of stream for the fishing
20 club because I had -- And it stuck out in my mind because I
21 had never seen anything like that recorded before. So it kind
22 of just stuck out in my mind that, oh, well this is new.

23 Q. Okay.

24 A. But I was never able to find the map. I believe
25 that I found the lease, and I believe I found in the lease

1 A. Are you saying Mattson directly?

2 Q. Yes.

3 A. No.

4 Q. Exhibit Number 9 then, I believe you testified is
5 a spreadsheet that would show the history of the abstract of
6 title to the 16 parcels of the Clough/Carlisle farm, beginning
7 with a treasurer's deed up until the time Mr. Carlisle
8 purchased the property?

9 A. Exhibit 9 would include title back to -- from the
10 1890's all the way up until I would say November of '02.

11 Q. Okay.

12 A. This would just be for the surface. There's no
13 leases or right-of-ways or any of that, mortgages. There's
14 nothing of that in this, it's just a pure chain of title for
15 the surface.

16 Q. Okay, great. And the chain of title for the
17 surface, would that include timber deeds for the timber?

18 A. No.

19 Q. Okay. I'm going to show you, which I haven't
20 marked yet, which would be Exhibit Number 10 (indicating).
21 It's a package of documents.

22 And I'd ask you if you could just take a look at that
23 and see if you could identify that for me, please?

24 (Sekerak Deposition Exhibit No. 10 was marked.)

25 A. This is a letter that you wrote to me, October

1 10th of 2002 regarding the title search on Carlisle versus
2 Mattson. And on the back are a lot of notes that I wrote.
3 And what is -- There's also -- These are the abstract of
4 title.

5 Q. Does that package represent a copy of the search
6 and abstract that you provided pursuant to my request?

7 A. Yes, but there's a deed in here of 2004, and this
8 is in 2002.

9 Q. Okay.

10 A. So that --

11 Q. With the exception of what appears to be a quit
12 claim deed dated May 6th, 2003, that would have been obviously
13 created after you did your search, correct?

14 A. Yes. And also it includes information from Thomas
15 Pierce who was an abstracter and he -- I bought -- purchased
16 his files. And in his files I found a letter from John
17 Kookogey, who was an attorney that hired Tom Pierce to work on
18 I believe it was the McChesney and Carlisle lawsuit.

19 Q. Okay.

20 A. And I believe that is where these abstracts came
21 from that are included in this package that I sent -- sent
22 you.

23 Q. Okay. And the abstract, it's the typewritten
24 pages and has each parcels identified by number one, two,
25 three --

1 copy of it.

2 Q. Okay. And you're looking at an article of
3 agreement that's dated April 1, 1968 between Marion C. Kinhead
4 and Fisher and Young, and it's what we have referred to in the
5 course of this case as the Kinhead to Fisher and Young timber
6 agreement?

7 A. Okay.

8 Q. And this is not -- This would not -- This would
9 not have been included in your search because it's not a
10 document of record?

11 A. Right.

12 Q. Okay.

13 A. I'm not sure how I had a copy in there.

14 Q. Okay. Is it possible that this was a document
15 that was in Mr. --

16 A. Pierce?

17 Q. Pierce's records?

18 A. It could be.

19 Q. Okay.

20 A. Yes, I believe it includes the timber agreements
21 and some of the out sales.

22 Q. Okay.

23 A. Because I see in here where the fishing document
24 is.

25 Q. Okay, the fishing lease?

1 A. Yes.

2 Q. Okay. There are within this exhibit that I could
3 find upon review, only two documents with regard to the
4 transfer of a timber interest out of the Clough farm. The
5 first one is apparently -- would that be record book --

6 A. Deed book.

7 Q. Deed book 177, page 609?

8 A. Yes.

9 Q. Of one year. It's between Allison C. Clough, C.L.
10 Clough, executors of Levi S. Clough, deceased, to Gordon I.
11 Norton, N-O-R-T-O-N, entered March 27, 1934 for a period of
12 one year.

13 And then in 1973, a timber deed between Marion C.
14 Kinkead and Fisher and Young, dated April 20, 1973, and
15 recorded at book 376, page 939?

16 A. Yes.

17 Q. Okay.

18 A. Yes, that's it.

19 Q. During the course of your title search, did you
20 find any other documents of title recorded at the Warren
21 County Courthouse with regard to an interest in timber on the
22 Clough farm out of --

23 A. You mean after 2002?

24 Q. Yes.

25 A. It would be this (indicating), I believe it's this

1 deed from Marion Kinkead by executor -- executrix to Mattson
2 Lumber, June 19th, 2004, in record book 1379, page 312.

3 Q. Okay. Have you had an opportunity to review the
4 docket after the date of that deed to see if there's any
5 subsequent deeds filed with regard to the timber on the Clough
6 farm?

7 A. I believe I have, and I believe it was to see what
8 happened with Fisher and Young and Mattson and where the
9 timber went from there.

10 Q. Okay. Would that be at the request of Attorney
11 Dennison?

12 A. Yes.

13 Q. Okay. I want to show you an Exhibit Number 7
14 (indicating), a portion that you identified of documents or
15 dealing with requests from Attorney Dennison.

16 Do you recall through reviewing these notes, recall
17 specifically what it was that Attorney Dennison was looking
18 for?

19 A. I believe he wanted the opinion of the Albert
20 Carlisle versus Mattson Company, a copy of that. And it was
21 filed January 31st of '02, and I FAX'ed it October 11th of
22 2002.

23 Q. Okay. And?

24 A. And then January 28th, 2003 Attorney Dennison
25 asked me to send him copies of the timber deeds referred to on

1 have been recorded and wasn't. So I included the copies of
2 the indexes to him.

3 Q. Okay. I'm going to show you what we've marked as
4 Exhibit Number 4 (indicating), which is a copy of the 1973
5 timber deed. And it appears to have your name written on the
6 top of it.

7 Do you recall if Attorney Dennison called and asked for
8 a copy of the Kinkead timber deed?

9 (Sekerak Deposition Exhibit No. 4 was marked.)

10 A. He may have. I -- I can't be positive.

11 Q. Okay. You don't have a note or anything written
12 down with regard to a separate request?

13 A. No. Most of my information is -- is gone, I don't
14 --

15 Q. Okay. I'm going to show you what I've marked as
16 Exhibit Number 6 (indicating), and ask if you can identify
17 that?

18 (Sekerak Deposition Exhibit No. 6 was marked.)

19 A. It is the estate of Marion Kinkead, and my
20 handwriting on -- is on there. It is recorded at -- or
21 registers docket 73, page 701 in the Board of County Recorder
22 of Deeds Office, our offices are combined.

23 I did write down a note next to Dora Squatriti's name.
24 I also wrote down address via -- I'm not fluent in Italian,
25 but it gave her address in Italy.

1 Q. Okay. I took a stab at it. I don't know how
2 close I got either. Did you get copies of these records at my
3 request?

4 A. I can't recall.

5 Q. Do you recall if this is a complete copy of the
6 estate filings from Marion C. Kinkead?

7 A. It appears to be.

8 Q. And the only reason that I ask that is if you flip
9 back, one, two, three, four pages to the inventory and
10 valuation form.

11 A. Yes.

12 Q. It appears to be book 28, page 316, filed March
13 28, 1989, and at the bottom it says, total of all pages, see
14 next page. And then the next page looks like page 318.

15 I'm just wondering if perhaps there was a page 317?

16 A. Their should have been.

17 Q. Okay.

18 A. What this is is for the local -- for just warren
19 County valuation. This is almost an itemized inventory and
20 valuation from the actual tax schedules.

21 Q. Okay.

22 A. It's kind of redundant.

23 Q. Okay. It's actually taken from the tax schedules
24 that are filed for the estate?

25 A. Yes.

1 A. No.

2 Q. This Exhibit 4 that you've been shown, that's the
3 1973 timber deed?

4 A. Yes.

5 Q. You located that while doing a title search on the
6 Clough farm?

7 A. Yes.

8 Q. Okay. And it's properly filed in the Warren
9 County Courthouse?

10 A. Yes.

11 Q. Okay. When you were doing the title search and
12 located the deed marked as Exhibit 4, did it indicate who had
13 filed the deed in the courthouse?

14 A. A lot of times you can see by the -- That's R.
15 Pearson Eaton's signature?

16 Q. Which is?

17 A. Right there (indicating).

18 Q. Under the residences of the grantee. Does that
19 mean he filed it?

20 A. A lot of times Mr. Eaton would not record deeds,
21 he would leave them in a drawer at the courthouse and tell
22 people to go to court. However, because of people might have
23 been out of town, he might have recorded the deed. It was
24 recorded.

25 Q. It the deed was recorded in April in 1973?

1 A. Yes.

2 Q. When you were going through the documents that you
3 brought that have been marked as Exhibit --

4 MR. HABER: What Exhibit is that?

5 MR. FRYLING: Seven.

6 BY MR. HABER:

7 Q. The documents are Exhibit 8.

8 A. Okay.

9 Q. You had indicated there were documents in there
10 involving the McChesney lawsuit?

11 A. Yes.

12 Q. How did you get those documents?

13 A. I went into the Prothonotary's Office.

14 Q. Why did you get the documents regarding the
15 McChesney lawsuit?

16 A. The chain of titles were the same and for the --
17 I'm not sure if it was the Mattson lawsuit or the Carlisle
18 versus McChesney lawsuit, there was a discrepancy on the tract
19 line with the Carlisle/McChesney lawsuit and I believe that
20 Mr. Kookogey was also involved in that.

21 So I just went in and looked for the chain of title,
22 which would have been the same.

23 Q. Okay. When did you do that?

24 A. (No audible answer.)

25 Q. Was that in response to Mr. Fryling's request for

Bartony Hare & Edson

Attorneys at Law

Law & Finance Building
Suite 1801
429 Fourth Avenue
Pittsburgh, Pa. 15219

Telephone 412/338-8632
Facsimile 412/338-6611

June 23, 1998

VIA OVERNIGHT EXPRESS

Mr. Lainard Bush
Rd # 1 Box 9
Spring Creek, PA 16436

**DEPOSITION
EXHIBIT**

Bush # 2

Re: Additional Lawsuit against Matson

Dear Lainard:

I have prepared the enclosed Praeipce for Writ of Summons for filing with the Prothonotary's Office in the Court of Common Pleas of Warren County. The filing of this Praeipce will initiate a new lawsuit on Bert's behalf against Matson, and toll the running of any statute of limitations.

Please sign the Praeipce on Bert's behalf and take it to the court house for filing. The filing fee is \$60.50. You can tell the clerk that Bert will arrange for service at a later date, so there is no need for them to deliver the praecipe to the sheriff.

If you have any questions, please call.

Very truly yours,

Scott

Scott Michael Hare

/SMH

Enclosures

IN THE COURT OF COMMON PLEAS OF WARREN COUNTY, PENNSYLVANIA

ALBERT T. CARLISLE,
Plaintiff,

v.

MATSON LUMBER CO. and
MATSON HARDWOODS, INC.,

Defendants.

CIVIL DIVISION

NO. _____

CODE:

PRAECIPE FOR
WRIT OF SUMMONS

Filed on behalf of
Plaintiff

Albert T. Carlisle
1210 Oak Drive
Ashtabula, OH 44004

Tel: 440-964-2131

IN THE COURT OF COMMON PLEAS
OF WARREN COUNTY, PENNSYLVANIA

ALBERT T. CARLISLE,)
)
Plaintiff,)
)
v.) No. _____
)
MATSON LUMBER CO. and)
MATSON HARDWOODS, INC.,)
)
Defendants.)

PRAECIPE FOR WRIT OF SUMMONS IN CIVIL ACTION

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action
against the within-named Defendants.

Albert T. Carlisle
1210 Oak Drive
Ashtabula, OH 44004

Tel: 440-964-2131

Date: June 23, 1998

DEPOSITION
EXHIBIT

Bush # 3

IN THE COURT OF COMMON PLEAS OF WARREN COUNTY, PENNSYLVANIA

ALBERT T. CARLISLE,

Plaintiff,

v.

MATSON LUMBER CO. and
MATSON HARDWOODS, INC.,

Defendants.

CIVIL DIVISION

NO. 000353

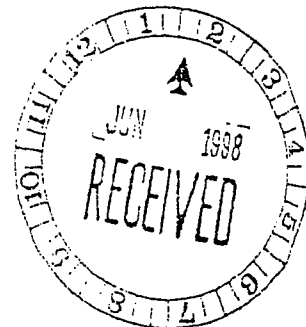
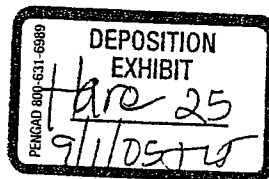
CODE:

PRAECIPE FOR
WRIT OF SUMMONS

Filed on behalf of
Plaintiff

Albert T. Carlisle
1210 Oak Drive
Ashtabula, OH 44004

Tel: 440-964-2131



Plaintiff's Appendix
000483

IN THE COURT OF COMMON PLEAS
OF WARREN COUNTY, PENNSYLVANIA

ALBERT T. CARLISLE,
Plaintiff,

No. 000353

MATSON LUMBER CO. and
MATSON HARDWOODS, INC.,
Defendants.

PRAECIPE FOR WRIT OF SUMMONS IN CIVIL ACTION

TO THE PROTHONOTARY:

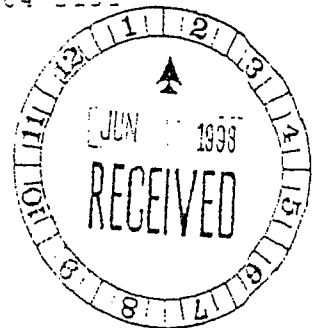
Kindly issue a Writ of Summons in Civil Action
against the within-named Defendants.

Albert T. Carlisle

Albert T. Carlisle
1210 Oak Drive
Ashtabula, OH 44004

Tel: 440-964-3131

Date: June 13, 1998



DEPOSITION
EXHIBIT

Carlisle I

THIS QUITCLAIM DEED

made and entered into as of the 6th day of May, in the year Two Thousand and Three (2003), by and between **DORA M. SQUATRITI**, individually and as Executrix under the Last Will and Testament of **MARION C. KINKEAD**, late of Warren, Pennsylvania, **GRANTOR**,

A
N
D

MATSON LUMBER COMPANY, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with offices situate at 132 Main Street, Brookville, Pennsylvania 15825, **GRANTEE**.

WITNESSETH, that in consideration of the sum of One and 00/100 Dollar (\$1.00), in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby remise, release and quitclaim to the said Grantee, ALL of the timber and trees, standing and fallen on all those certain tracts of land situate in Spring Creek Township, Warren County, Pennsylvania, bounded and described as follows:

TRACT NUMBER 1:

BEGINNING at the northeast corner at a hemlock tree; thence South, a distance of 136 rods to a post; thence West by lands formerly owned by W. A. Irvine to the corner of land formerly owned by Francis Bates; thence by lands formerly of the said Bates, a distance of 136 rods to a post; thence East by lands formerly of W. A. Irvine to the place of beginning; CONTAINING 64 acres and 155 rods, more or less.

TRACT NUMBER 2:

BEGINNING at a post and stones in the northwest corner of the lot hereby conveyed; thence East, a distance of 169 rods to a post; thence South, a distance of 101 rods to a post; thence East, a distance of 49.1 rods to a post; thence South, a distance of 110.7 rods to a post; thence West, a distance of 166 rods to a post; thence North, a distance of 62.7 rods to a post; thence West, a distance of 53.7 rods to a post; thence North, a distance of 149 rods to a post and stones, the place of beginning; CONTAINING 237 acres of land, more or less, and being part of Tract No. 363.

TRACT NUMBER 3:

BEGINNING at the northwest corner of said piece of land at a post; thence in a Southerly direction along the Morton Hill Road to the southwest corner of said piece of land; thence North $88\frac{3}{4}^{\circ}$ East, a distance of 134.6 rods to a hemlock; thence North $1\frac{1}{4}^{\circ}$ East, a distance of 131.4 rods to a post; thence South $89\frac{3}{4}^{\circ}$ West, a distance of 134.6 rods to a post, the place of beginning; CONTAINING about 105 acres, more or less.

TRACT NUMBER 4:

Being the homestead farm formerly of G. W. Nichols, and described in the three following Deeds: from Frank E. Bates and wife to C. W. Nichols dated March 21, 1890, and recorded as hereinafter set forth in Deed Book 68, page 81, as commencing at a post in the south line of said property; thence South $88\frac{3}{4}^{\circ}$ West by lands now or formerly of Smith, a distance of 55.5 perches to a post; thence North $1\frac{1}{4}^{\circ}$ West by the same to the State road, supposed to be about 145 rods; thence Eastwardly along the center of said road to the northwest corner of land deeded by Francis Bates to L. L. Bates; thence South $1\frac{1}{4}^{\circ}$ East along said lands now or formerly of L. L. Bates to a post, the place of beginning; supposed to contain about 55 or 54 acres of land out of Tract No. 303.

TRACT NUMBER 5:

The east one-half of 63 acres of land deeded from George Yeager to Francis Bates on July 5, 1850, and recorded on July 3, 1851, off of Tract Nos. 304 and 363.

TRACT NUMBER 6:

As described in a Deed from L. L. Bates and wife to C. W. Nichols dated February 21, 1886, commencing in the center of the State Road and the center of the Morton Hill Road at the junction of those two roads; thence South $1\frac{1}{4}^{\circ}$ East by land now or formerly of Cordelia Leonard and W. A. Irvine, a distance of 185.5 rods to a beech, the southeast corner of the now or formerly Francis Bates home farm; thence South $88\frac{3}{4}^{\circ}$ West along the south line of said farm, a distance of 51 rods to a post; thence North $1\frac{1}{4}^{\circ}$ West to the State Road; thence Eastwardly along the center of said road to the center of said Morton Hill Road, the place of beginning, supposed to contain about 53 acres of land.

TRACT NUMBER 7:

On the North by land above described; on the East by land now or formerly of F. E. Bates; on the South by land formerly of C. W. Nichols; and on the West by land now or formerly of M. Smith; CONTAINING about 31-1/2 acres of land; and also so much of the land described in a Deed from S. D. I. Newbold to the said C. W. Nichols dated March 22, 1888, and recorded in Deed Book 64, page 136, as lies west of the Morton Hill Road, and adjoining the lands hereinabove described.

TRACT NUMBER 8:

On the South by lands now or formerly owned by W. A. Irvine's heirs; on the West by the Morton Hill Road and land formerly owned by George Bates; on the North by land formerly owned by Mrs. Elias Wood; and on the East by the station road and lands formerly owned by Lewis Stoddard; CONTAINING 68 acres, 59 rods of land, more or less, out of Tract No. 304.

TRACT NUMBER 9:

On the North by land of Whitely; on the East by land formerly of Greeley; on the South by lands formerly owned by W. A. Irvine; and on the West by lands conveyed to C. W. Nichols by F. J. Jones and wife, and a public road leading to Spring Creek R.R. Station and lands now or formerly of Stoddard; CONTAINING 44 acres, more or less.

TRACT NUMBER 10:

On the North by land now or formerly of Tom Forbes; on the East by land formerly of W. A. Irvine and L. S. Clough; on the South by lands formerly of William Morton, now or formerly L. S. Clough; CONTAINING 45 acres, more or less.

TRACT NUMBER 11:

Part of Tract No. 310, described as follows: BEGINNING in the center of the State Road at a point where the same crosses the tract line between lands formerly of Sarah D. I. Newbold and that now or formerly of L. Greeley; thence South 01° 45' East, a distance of 88 rods to a post, the southwest corner of Tract No. 310; thence North 88° 45' East along the southerly line of Tract No. 310, a distance of 81 rods to a post in said tract line; thence North 2° West, a distance of 109-1/2 rods to a post in the center of the State Road; thence Westerly along the center of said road,

a distance of 84.3 rods to the place of beginning; CONTAINING 50 acres of land, more or less.

TRACT NUMBER 12:

BEGINNING at a point in the center of the State Road at the northeast corner of land heretofore conveyed by S. S. Wead; and running thence South 02° East, a distance of 112.6 rods to a post at the southeast corner of said Wead's land, and in the south line of Tract No. 310; thence North $88\text{-}3/4^{\circ}$ East, a distance of 350 rods to the western bank of the Big Brokenstraw Creek at low water mark; thence Northwesterly along the western bank of the Big Brokenstraw Creek at low water mark to the center of the State Road; thence Southwesterly along the center of the State Road, to the place of beginning; CONTAINING 214 acres, 104 perches of land, more or less, and being a part of Tract No. 310. The land herein conveyed to include all of the land lying west of the Big Brokenstraw Creek belonging to Mrs. S. D. J. Newbold in said tract. Also, all of the islands in that part of Big Brokenstraw Creek which lie east of the foregoing described land.

TRACT NUMBER 13:

BEGINNING at the northwest corner of Tract No. 313; thence extending due East along the north line of said tract, a distance of 91.9 perches to the corner of land formerly of E. Jackson; thence due South along the same, a distance of 135 perches to the southwest corner of said Jackson's land; thence due West, a distance of 94 perches to the west line of said tract; thence due North along said line, a distance of 135 perches to the place of beginning; CONTAINING 78 acres and 41 perches, more or less, being the northwest corner of Tract No. 313. Being land conveyed to L. S. Clough by Dan A. Geiger and wife by Deed dated October 1, 1906, and recorded in Deed Book 105, page 260.

TRACT NUMBER 14:

On the North by lands formerly of Miles and Watts; on the East by the eastern line of the tract; on the South by the southern line of the tract; on the West by lands formerly of Yeager and Miles and Watts. Being 51 acres 18 perches from the southeast side of Tract No. 304, as conveyed to L. S. Clough by Deed of J. V. Kinyon dated March 30, 1911, and recorded in Deed Book 114, page 397.

TRACT NUMBER 15:

BEGINNING at the northwest corner of the whole Tract No. 314; thence South by the west line of the tract, a distance of 159 rods to a post; thence East, a distance of 53 rods, 8 links to a post; thence North by the residue of the tract, a distance of 159 rods to a post in the north line of the tract; thence West along the north line of the tract, 53 rods and 8 links to the place of beginning; **CONTAINING** 50 acres and allowance.

TRACT NUMBER 16:

BEGINNING at the northwest corner of the tract conveyed at a post; thence East by land formerly of Sager, a distance of 50.7 perches to lands formerly of Jackson; thence South by land formerly of Jackson, a distance of 201 perches to land formerly of Irvine; thence West by lands formerly of Irvine, a distance of 50.7 perches to a post; thence North by lands formerly of Irvine and lands formerly of Yager, a distance of 201 perches to the place of beginning; **CONTAINING** 60 acres, more or less, being part of Tract No. 363.

SUBJECT to rights of way for electric lines granted to Pennsylvania Electric Company by instruments dated October 15, 1957 and November 29, 1957, and recorded respectively in Deed Book 291, page 460, and Deed Book 292, page 140.

EXCEPTING AND RESERVING that portion of said premises which was conveyed by Robert M. Kinkead and wife, to Charles A. Williams and wife, by Deed dated June 6, 1958, and recorded in Deed Book 294, page 475.

TOGETHER WITH a full release for all timber and trees whensoever cut and removed from the above-described tracts.

TOGETHER WITH any and all rights of entry on and over the above-described tracts for the purpose of cutting, skidding, piling and removing said timber

BEING any timber and trees and removal rights which may have been either excepted and reserved by Marion C. Kinkead or may have reverted to Marion C. Kinkead by virtue of the following Deeds:

1. Deed from Marion C. Kinkead, widow, to Fisher & Young, Inc., dated March 27, 1969, and recorded in the Office of the Recorder of Deeds for Jefferson County, Pennsylvania, in Deed Book 357, page 349;

2. Deed from Marion C. Kinkead, widow, by Fisher & Young, Inc., dated April 20, 1973, and recorded as aforesaid in Deed Book 376, page 939.

The said Marion C. Kinkead died testate on July 14, 1988. Her Last Will and Testament was duly probated in the Office of the Register of Wills for Warren County, Pennsylvania, in Will Book 73, page 701. Letters Testamentary were issued to Dora M. Squatriti by the Register of Wills for Warren County, Pennsylvania on July 18, 1988. (Estate No. 21,581)

By her Last Will and Testament, the said Marion C. Kinkead devised her entire estate to her daughter, Dora M. Squatriti.

To comply with the Pennsylvania Realty Transfer Tax Act, it is hereby certified that the within transfer is exempt from tax pursuant to Section 1102-C.3 (4).

IN WITNESS WHEREOF, the said Grantor has hereunto set her hand and seal as of the day and year first above written.

Dora M. Squatriti (SEAL)
Dora M. Squatriti

Dora M. Squatriti (SEAL)
Dora M. Squatriti, Executrix under the
Last Will and Testament of Marion C.
Kinkead

I hereby certify the precise address of the within named Grantee to be:

132 Main Street, Brookville, PA 15825

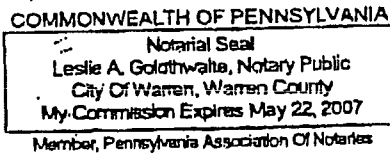
[Signature]
Attorney for Grantee

COMMONWEALTH OF PENNSYLVANIA,

COUNTY OF WARREN, ss:

On this, the 22nd day of May, 2003, before me, the undersigned officer, personally appeared Dora M. Squatriti, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.



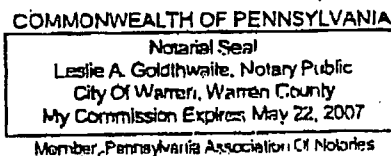
Leslie A. Goldthwaite
Notary Public

COMMONWEALTH OF PENNSYLVANIA,

COUNTY OF WARREN, ss:

On this, the 22nd day of May, 2003, before me, the undersigned officer, personally appeared Dora M. Squatriti, Executrix under the Last Will and Testament of Marion C. Kinkead, deceased, known to me (or satisfactorily proven) to be the person described in the foregoing instrument and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.



Leslie A. Goldthwaite
Notary Public

55

THEODORE E. WARREN 1897-1969
M. H. YOUNG
E. TERRY WARREN
JAMES A. MEWIGAN
WILLIAM E. RIEDEL

LAW OFFICES
WARREN AND YOUNG
PEOPLES SAVINGS & LOAN BUILDING
ASHTABULA, OHIO 44004
AREA CODE 216
997-6175

February 11, 1971

DEPOSITION
EXHIBIT

Carlisle L

Mr. John S. Kookogey
Jack, Kookogey & Forssell
144 West Spring Street
Titusville, Pennsylvania 16354

RE: Carlisle - Fisher & Young, Inc.

Dear Mr. Kookogey:

I have yours of January 26th, explaining the split-out of the timber lands and the real estate on the Carlisle property. Fisher and Young did request the appraiser to assess one-third of the total valuation to Fisher and Young for their timber lands and the balance to us. This does not seem fair to me. Under the terms of the agreement, he is prevented using same because of the existing timber rights of your client. I frankly think the split should be fifty-fifty on the assessments as you and I agreed. Mr. Carlisle has some acquaintances there with the taxing department, and he is going to look into the matter himself when next in Pennsylvania. You have agreed with me that the value of the timber rights is approximately \$100,000.00 and certainly the value of the land is an equivalent amount which is indicated by the purchase price paid by Mr. Carlisle. On the basis of this, I feel that the taxes should be split on a fifty-fifty basis.

To expedite the settlement of the 1970 taxes, however, we will settle this amount on the basis of one-third two-thirds split as proposed by the comptroller of your client. Earlier, he had forwarded a check to Mr. Carlisle representing this one-third interest, but same has not been cashed by Mr. Carlisle. I, therefore, ask that the comptroller issue a stop-payment order on this check and that a new check be issued with a current date representing this one-third tax payment. This will at least clarify the matter for the tax year 1970, leaving open the remaining years. After Mr. Carlisle has conferred with the appropriate officials concerning appraisal figures on the respective interests, we will be in further communication with you in this regard.

Relating to the Kinkead Agreement, I am at a loss to understand the position of your client. They are admittedly in breach of the purchase agreement, and yet wish to do nothing concerning same. I had proposed to you that we work out some plan concerning

WARREN AND YOUNG

Mr. John S. Kookogey
Jack, Kookogey & Forssell

February 11, 1971

Page 2

a terminable interest of the timber rights. You have responded to me that this is unacceptable. You have suggested that we undertake some sort of a guarantee basis, and I find this unacceptable. It seems rather strange to me that Fisher and Young could purchase property including timber rights from a party for the sum of \$100,000.00, and in turn, sell the underlying land for \$100,000.00 which they received in cash. In the Kinhead arrangement, it appears that very little, if any, cash was paid, and to date the sum of \$30,000.00 or less has been delivered by Fisher and Young to Mrs. Kinhead. This means your client has been significantly astute in being able to finance the acquisition of timber rights without the payment of cash. Unfortunately, however, there was this oversight in the purchase agreement and we are not willing to ignore it.

I obviously prefer not to retain other counsel in your community or Meadville in order to institute action to enforce our rights. However, if this must be done, then obviously the task will be undertaken. I, frankly, would appreciate any suggestions that you might have concerning the solution to this problem, realizing the matter with which we are basically concerned is a terminable interest in the timber rights or a significant portion thereof.

May I hear from you?

Yours truly,

E. Terry Warren
E. Terry Warren (en)

ETW:an

cc: Mr. A. T. Carlisle

*Ivy will cut timber - & pay off Mrs. N.
Orel ^{was} cut 10-20 yrs.*

TIMBER DEED

#2237

THIS INDENTURE, made this 1st day of April, 1973, between FISHER & YOUNG, INC., a Pennsylvania corporation, with place of business in Oil Creek Township, Crawford County, Pennsylvania, PENNSYLVANIA BANK & TRUST COMPANY, as Guardian of the Property of Minors under the Will of Wilbert F. Young, on behalf of Wilbert J. Cochran, a Minor, PHILIP H. COCHRAN and ESTHER Y. COCHRAN, his wife, P. CRAIG COCHRAN, Single, and ELIZABETH F. COCHRAN, Single, of Crawford County, Pennsylvania GRANTOR,

A N D

FISHER & YOUNG HARDWOODS, INC., a Pennsylvania corporation, with place of business in Oil Creek Township, Crawford County, Pennsylvania, GRANTEE,

WITNESSETH, THAT the said Grantor, in consideration of ONE (\$1.00) DOLLAR, does grant, bargain, sell and convey unto the said Grantee, its successors and assigns, all of the timber and trees standing and fallen, situate on the premises described in Schedule "A", attached hereto and incorporated herein by reference,

TOGETHER WITH full rights of ingress, egress and regress over and across said land and other necessary rights for the cutting, skidding, piling and removal of said timber.

IT IS INTENDED by this Indenture to convey the timber and timber rights reserved under a deed between the parties hereto dated April 1, 1973.

TO HAVE AND TO HOLD THE SAME UNTO and for the use of the Grantee herein, its successors and assigns, forever.

Plaintiff's Appendix
000494

EXHIBIT

2

BOOK PAGE
0001 0495

This conveyance has been authorized and approved by a duly convened meeting of the Board of Directors of Fisher & Young, Inc. held on March 9, 1973.

IN WITNESS WHEREOF, the Grantor hereunto has caused this instrument to be executed the day and year first above written.

FISHER & YOUNG, INC.

Attest:

Chas W. Rodgers Secretary By Philip H. Cochran President

PENNSYLVANIA BANK AND TRUST COMPANY

Attest:

Rochelle M. Bitter Secretary By J. J. Felt Vice President As Guardian

Philip H. Cochran Philip H. Cochran
P. Craig Cochran P. Craig Cochran
Esther F. Cochran Esther F. Cochran
Elizabeth F. Cochran Elizabeth F. Cochran

OIL CREEK TOWNSHIP
TRANSFER TAX
1% REALTY TRANSFER
TAX PAID \$2.11
DATE PAID 1/9/87
RECEIVED BY Patricia A. Hall
CRAWFORD COUNTY
REGISTER & RECORDER

Titusville Area School District
1% Realty Transfer Tax
Date Paid 1/9/87
Tax Paid \$6.33
Received by Patricia A. Hall
Crawford County Reg. & Rec.

BOOK PAGE
0001 0510

under Section XI of deed to Fisher & Young, Inc., dated January 2, 1958, recorded in Deed Book 298, Page 173.

20. "Snavley" - containing 61.68 Acres as described in deed to Fisher & Young, Inc., dated December 3, 1970, recorded in Deed Book 365, Page 454.

21. "Wylie" - containing 28.5 Acres as described under Section VIII paragraph 3 of deed to Fisher & Young, Inc., dated January 2, 1958, recorded in Deed Book 298, Page 173.

22. "Wright" - containing 114 Acres, more or less, net, as described in deed to Fisher & Young, Inc., dated July 2, 1964, recorded in Deed Book 333, Page 217.

XII. SPRING CREEK TOWNSHIP.

1. "Bernarding" - containing 253 Acres 142 square rods, more or less, as described in Section II of deed to Fisher & Young, Inc. dated January 2, 1958, recorded in Deed Book 298, Page 173.

2. "Kinhead" - containing 153 Acres, more or less, described as parcel No. 16 in deed to Fisher & Young, Inc. dated March 27, 1968, recorded in Deed Book 357, Page 349.

3. "Larimer #1" - consisting of (2) parcels of land containing 70 Acres, more or less, and 22-1/8 Acres, as described in deed to Fisher & Young, Inc. dated April 7, 1967, recorded in Deed Book 347, Page 491.

4. "Wead - Larimer #2" - containing 60 Acres, more or less, as described in deed to Fisher & Young, Inc., dated October 22, 1957, recorded in Deed Book 290, Page 394.

XIII TRIUMPH TOWNSHIP.

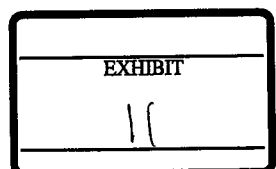
1. "Byers" - containing 40 Acres, more or less, as described in deed to Fisher & Young, Inc., dated May 2, 1960, recorded in Deed Book 311, Page 316.

2. "Dodds No. 2" - consisting of 2 parcels of land, 100 Acres, more or less, and 5-1/2 Acres, as described in deed to Fisher & Young, Inc., dated January 18, 1967, recorded in Deed Book 346, Page 683.

3. "Garber" - containing 6 Acres, more or less, as described in deed to Fisher & Young, Inc., dated June 1968, recorded in Deed Book 353, Page 505.

LIST OF EXHIBITS

- ✓1. X Lease between Robert M. Kinkead and Clough Farm Club - 2/1/62
- ✓2. X Deed between Marion C. Kinkead and Fisher & Young, Inc. - 3/27/69
- ✓3. X Article of Agreement between Marion C. Kinkead and Fisher & Young, Inc. - 4/1/68
- ✓4. X Letter from John Kookogey to E. Terry Warren - 1/16/69
- ✓5. X Minutes of the Meeting of Directors of Fisher & Young, Inc. - 4/2/69
- ✓6. X Notes - 3/7/69
- ✓7. X Letter from John Kookogey to David Eardley - 3/19/69 ✓
- ✓8. X Letter from John Kookogey to David Eardley - 3/31/69 ✓
- ✓9. X Letter from David Eardley to John Kookogey - 4/15/69 ✓
- ✓10. X Letter from John Kookogey to The Pennsylvania Bank & Trust Company, copy of deposit slip and note - 4/18/69 ✓
- ✓11. X Letter from John Kookogey to David Eardley - 4/29/69 ✓
- ✓12. X Letter from John Kookogey to David Eardley - 5/28/69 ✓
- ✓13. X Letter from John Kookogey to David Eardley - 7/25/69 ✓
- ✓14. X Letter from David Eardley to John Kookogey - 7/25/69 ✓
- ✓15. X Bill for Services Rendered from Jack, Kookogey & Forsell to Fisher & Young, Inc. - 8/25/69 ✓
- ✓16. X Letter from E. Terry Warren to John Kookogey - 9/18/69 ✓
- ✓17. X Draft Agreement of Sale between Fisher & Young, Inc. and Albert T. Carlisle - 5/28/69 (1/20/70)



- ✓18. X Letter from John Kookogey to E. Terry Warren - 9/30/69
- ✓19. X Letter from E. Terry Warren to John Kookogey - 10/28/69
- ✓20. X Minutes of the Meeting of Directors of Fisher & Young, Inc. - 11/3/69
- ✓21. X Resolution and Certificate re: sale of various parcels of land to Albert T. Carlisle - 1969
- ✓22. X Letter from E. Terry Warren to John Kookogey - 1/5/70
- ✓23. X Receipt of 1/5/70 correspondence acknowldged and returned by Kookogey - 1/9/70
- ✓24. X Letter from John Kookogey to William H. Kemmler, Union Title Guaranty Company - 1/12/70
- ✓25. X Letter from John Kookogey to E. Terry Warren - 1/12/70
- ✓26. X Letter from E. Terry Warren to John Kookogey - 1/17/70
- ✓27. X Letter from John Kookogey to William H. Kemmler, Union Title Guaranty Company - 1/19/70
- ✓28. X Letter and Bring-Down Certificate from John Kookogey dated 1/19/70
- ✓29. X Letter from Dorothy S. Cole, Secretary to William E. Rice, Recorder - 1/19/70
- ✓30. X Agreement of Sale between Fisher & Young, Inc. and Albert T. Carlisle - 5/28/69, filed 1/20/70
- ✓31. X Deed between Fisher & Young, Inc. and Albert T. Carlisle - 1/9/70, filed 1/19/70
- ✓32. X Letter from John Kookogey to E. Terry Warren - 1/30/70
- ✓33. X Invoice for title from Union Title Guaranty Company to Albert T. Carlisle - 1/27/70
- ✓34. X Attorney's Preliminary Certificate of Title - 1969
- ✓35. X Letter from E. Terry Warren to John Kookogey - 2/2/70
- ✓36. X Letter from John Kookogey to William H. Kemmler, Union Title Guaranty Company - 2/5/70

- ✓37. X Letter from E. Terry Warren to Jack Kookogey - 2/6/70 ✓
- ✓38. X Letter from E. Terry Warren to Union Title Guaranty Company - 2/6/70 ✓
- ✓39. X Letter from William Kemmler to John Kookogey - 2/9/70 ✓
- ✓40. X Letter from John Kookogey to E. Terry Warren, with handwritten notes, and Statement of Value - 2/11/70 ✓
- ✓41. X Letter from John Kookogey to William Kemmler, Union Title Guaranty Company - 2/12/70 ✓
- ✓42. X Letter from E. Terry Warren to John Kookogey - 2/13/70 ✓
- JOHN - 42 a. X ~~Letter from E. Terry Warren to John Kookogey - 2/13/70~~ 12/23/70 ✓
- ✓43. X Letter from John Kookogey to E. Terry Warren - 4/17/70 ✓
- ✓44. X Letter from John Kookogey to E. Terry Warren - 4/28/70 ✓
- ✓45. X Letter from John Kookogey to Mrs. Keith Horne, Kocjancic & Horne - 5/28/70 ✓
- ✓46. X Letter from Keith Horn to John Kookogey with report on estimated volume and value of timber on the Clough Farm - 6/10/70 ✓
- ✓47. X Letter from E. Terry Warren to John Kookogey - 12/10/70 ✓
- ✓48. X Letter from John Kookogey to E. Terry Warren - 1/4/71 ✓
- ✓49. X Notes re: tax computations
- ✓50. X Letter from E. Terry Warren to John Kookogey - 1/19/71 ✓
- ✓51. X Notice of Change in Assessment to Albert Carlisle - 12/31/70
- ✓52. X Notice of Change in Assessment to Albert Carlisle - 12/31/70
- ✓53. X Notice of Change in Assessment to Albert Carlisle - 12/31/70
- ✓54. X Letter from John Kookogey to E. Terry